



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

मंगलवार, 12 फरवरी, 2019 / 23 माघ, 1940

हिमाचल प्रदेश सरकार

वन विभाग

अधिसूचना

शिमला—171002, 4 फरवरी, 2019

संख्या: एफ०एफ०ई०—बी—एफ(2)—८/२०१७.—संसद द्वारा पारित प्रतिकरात्मक वनरोपण निधि अधिनियम, 2016 (2016 का 38) भारत सरकार द्वारा भारत के राजपत्र, असाधारण में तारीख 03 अगस्त, 2016 को प्रकाशित किया गया है।

2. केन्द्रीय सरकार ने अधिसूचना संख्या एस0 ओ0 3967 (ई0), तारीख 13 अगस्त, 2018 द्वारा 30 सितम्बर, 2018 को ऐसा दिवस नियत किया है जिसको उक्त अधिनियम के उपबन्ध प्रवृत्त होंगे;

3. प्रतिकरात्मक वनरोपण निधि अधिनियम, 2016 (2016 का 38) की धारा 4 की उप-धारा (1) उपबन्धित करती है कि:-

'ऐसी तारीख से, जो प्रत्येक राज्य सरकार, राजपत्र में अधिसूचना द्वारा इस निमित्त नियत करे, इस अधिनियम के प्रयोजनों के लिए ऐसे राज्य के लोक लेखाओं के अधीन "हिमाचल प्रदेश राज्य प्रतिकरात्मक वनरोपण निधि—..... (राज्य का नाम)" के नाम से ज्ञात एक विशेष निधि की स्थापना की जाएगी:'

4. अतः, हिमाचल प्रदेश के राज्यपाल, प्रतिकरात्मक वनरोपण निधि अधिनियम, 2016 (2016 का 38) की धारा 4 की उप-धारा (I) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, इस अधिनियम के प्रयोजन के लिए हिमाचल प्रदेश राज्य के लोक लेखा की व्याज वाली धारा के अधीन, 'मुख्य शीर्ष: 8121—सामान्य और अन्य आरक्षित निधियां' के नीचे एक विशेष लघु शीर्ष: 129—हिमाचल प्रदेश प्रतिकरात्मक वनरोपण निधि (रा0 प्र0 व0 नि0) के अधीन 'हिमाचल प्रदेश राज्य प्रतिकरात्मक वनरोपण निधि' (रा0 प्र0 व0 नि0) (जिसे इसमें इसके पश्चात् 'राज्य निधि' निर्दिष्ट किया गया है) के रूप में निर्दिष्ट की जाने वाली विशेष निधि को राजपत्र में इसके प्रकाशन की तारीख से स्थापित करते हैं।

5. हिमाचल प्रदेश राज्य प्रतिकरात्मक वनरोपण निधि राज्य सरकार के नियन्त्रणाधीन होगी और इसे राज्य प्राधिकरण द्वारा संचालित किया जाएगा। वित्तीय विनियमन और प्रक्रियाएं, विशिष्टतः राज्य प्राधिकरण के बजट के आहरण और कार्यान्वयित करने की प्रक्रिया, सामान्य वित्तीय नियम, 2017 और इस निमित्त केन्द्र सरकार और राज्य सरकार द्वारा समय—समय पर जारी आदेशों के अनुसार होंगी।

6. राज्य की राज्य निधि में निम्नलिखित जमा किया जाएगा :-

- (i) ऐसी समस्त धनराशियों का अव्ययित शेष जो तारीख 2 जुलाई, 2009 के मार्गदर्शक सिद्धान्तों की अनुपालना में राज्य में गठित तदर्थ प्राधिकरण द्वारा राज्य प्रतिकरात्मक वनरोपण निधि प्रबंध और योजना प्राधिकरण को अंतिरत किया गया है;
- (ii) प्रतिकरात्मक वनरोपण निधि अधिनियम, 2016 की धारा 5 (क) के अनुसार राष्ट्रीय निधि से अंतरणीय समस्त धन;
- (iii) प्रतिकरात्मक वनरोपण, अतिरिक्त प्रतिकरात्मक वनरोपण, शास्त्रिक प्रतिकरात्मक वनरोपण, शुद्ध वर्तमान मूल्य, जलागम क्षेत्र उपचार योजना मद्दे राज्य द्वारा उपयोक्ता अभिकरणों के प्राप्त समस्त धन या वन (संरक्षण) अधिनियम, 1980 के उपबन्धों के अधीन अनुमोदन प्रदान करते समय केन्द्रीय सरकार द्वारा अनुबद्ध शर्तों की अनुपालना के लिए कोई धन; और
- (iv) ऐसे मामलों में, जहां अपयोजित वन भूमि संरक्षित क्षेत्रों अर्थात् जैव विविधता और वन्य जीव के संरक्षण से संबंधित क्रियाकलाप करने के लिए वन्य जीव (संरक्षण) अधिनियम, 1972 की धारा 18, धारा 26क या धारा 35 के अधीन अधिसूचित क्षेत्रों के भीतर आती है, वहां राज्य द्वारा उपयोक्ता अभिकरणों से वसूलीय निधियां।

7. राज्य सरकार इसके द्वारा गठित राज्य निधि में निम्नलिखित भी जमा कर सकेगी :-

- (i) राज्य प्राधिकरण द्वारा प्राप्त सहायता अनुदान, यदि कोई हो;
- (ii) राज्य प्राधिकरण द्वारा लिया गया कोई ऋण या लिया गया कोई उधार;
- (iii) राज्य प्राधिकरण द्वारा उपकृति, दान या संदान के माध्यम से प्राप्त कोई अन्य राशियां।

8. राज्य निधि में प्राप्त धन राज्य के लोक लेखा के अधीन ब्याज वाली निधि होगी।

9. राज्य निधि में अतिशेष अत्यपगतीय होगा और वर्षानुवर्ष आधार पर केन्द्रीय सरकार द्वारा घोषित दर के अनुसार ब्याज प्राप्त करेगा।

10. राज्य निधि में उपलब्ध धन का निम्नलिखित रीति में संवितरण और उपयोग किया जाएगा, अर्थात्:-

- (क) प्रतिकरात्मक वनरोपण, अतिरिक्त प्रतिकरात्मक वनरोपण, शास्तिक प्रातिकरात्मक वनरोपण, जलागम क्षेत्र उपचार योजना और किसी अन्य स्थल विनिर्दिष्ट स्कीम के लिए प्राप्त धन का उपयोग, राज्य द्वारा प्रस्तुत स्थल विनिर्दिष्ट स्कीमों के साथ ही वन (संरक्षण) अधिनियम, 1980 के अधीन वन भूमि के अपयोजन के लिए अनुमोदित प्रस्तावों के अनुसार किया जाएगा;
- (ख) शुद्ध वर्तमान मूल्य और शास्तिक शुद्ध वर्तमान मूल्य मद्दे प्राप्त धन का उपयोग प्रतिकरात्मक वनरोपण नियम, 2018 के नियम 5 के अधीन विहित रीति में, कृत्रिम पुनरुत्पादन (बागान), सहायक प्राकृतिक पुनरुत्पादन वन प्रबंध, वन संरक्षण, वन और वन्य जीव संबन्धी अवसंरचना विकास, वन्य जीव संरक्षण और प्रबंध, काष्ठ और अन्य वन उत्पाद बचत युक्तियों के प्रदाय और अन्य सहबद्ध क्रियाकलापों के लिए किया जाएगा;
- (ग) राज्य निधि में उपलब्ध निधियों पर प्रोद्भूत ब्याज और राज्य सरकार द्वारा संगृहीत सभी ऐसे धन पर प्रोद्भूत ब्याज का उपयोग, जो उच्चतम न्यायालय के तारीख 5 मई, 2006 के निर्देशों की अनुपालना में तदर्थ प्राधिकरण के अधीन रखे गए हैं और राष्ट्रीय बैंकों में जमा किए गए हैं, वन और वन्य जीव के संरक्षण और विकास के लिए प्रतिकरात्मक वनरोपण निधि नियम, 2018 के नियम 6 के अधीन विहित रीति में किया जाएगा;
- (घ) वन्य जीव (संरक्षण) अधिनियम, 1972 की धारा 5 के अधीन गठित राष्ट्रीय वन्य जीव बोर्ड का स्थायी समिति द्वारा किए गए विनिश्चय या उच्चतम न्यायालय के ऐसे आदेशों के अनुसार, जिनमें संरक्षित क्षेत्रों में वन भूमि के अपयोजन के मामले अंतर्वलित हैं, उपयोक्ता अभिकरणों से वसूल किए गए सभी धन को समग्र रूप में रखा जाएगा और उससे हुई आय का उपयोग अनन्य रूप से राज्यों के संरक्षित क्षेत्रों में रक्षण और संरक्षण क्रियाकलाप करने के लिए किया जाएगा और अपवादिक परिस्थितियों में समग्र धन के किसी भाग का उपयोग राष्ट्रीय प्राधिकरण के पूर्व अनुमोदन के अध्यधीन भी किया जा सकेगा;
- (ङ) उपयोक्ता अभिकरणों से वसूल की जाने वाली ऐसी रकम, जो प्रत्यक्षतः किसी वर्ष में राज्य निधि में जमा की जाएगी, का दस प्रतिशत प्रतिकरात्मक वनरोपण निधि अधिनियम, 2016 की धारा 3(4) में यथा उपबंधित व्यय की पूर्ति के लिए राष्ट्रीय निधि में अंतरित किया जाएगा;
- (च) किसी राज्य प्राधिकरण के प्रबन्ध के लिए अनावर्ती और आवर्ती व्यय, जिसके अन्तर्गत इसके अधिकारियों और अन्य कर्मचारियों के संदेय वेतन और भत्ते भी हैं, की पूर्ति प्रतिकरात्मक वनरोपण निधि नियम, 2018 के नियम 6(क) और 6(ख) के अधीन विहित रीति में, राज्य निधि में उपलब्ध रकमों पर प्रोद्भूत ब्याज के भाग में से की जा सकेगी,

11. किसी वर्ष में राष्ट्रीय निधि और राज्य निधि में धन जमा करने की रीति को विनियमित करने के लिए लेखा प्रक्रिया, जिसे केन्द्र सरकार द्वारा अंतिम रूप दिया जाए, को अपनाया जाएगा।

आदेश द्वारा,
राम सुभग सिंह,
अतिरिक्त मुख्य सचिव (वन)।

[Authoritative English text of this Department Notification No. FFE-B-F(2)8/2017, dated 04-02-2019 as required under clause (3) of Article 348 of the Constitution of India].

FORESTS DEPARTMENT

NOTIFICATION

Shimla-171002, the 04th February, 2019

No. FFE-B.F(2)8/2017.—Whereas “The COMPENSATORY AFFORESTATION FUND ACT, 2016 (38 of 2016)”, passed by the Parliament, has been published by the Government of India in the Gazette of India, Extraordinary on 3rd August, 2016.

2. AND whereas the Central Government, *vide* notification No. S. O. 3967(E) dated 13th August, 2018, has appointed the 30th day of September, 2018 as the date on which the provisions of the said Act shall come into force.

3. AND whereas sub-section (1) of section 4 of the Compensatory Afforestation Fund Act 2016 (38 of 2016) provides that:—

"With effect from such date as each State Government may, by notification in the Official Gazette, appoint in this behalf, there shall be established for the purposes of this Act, a special Fund to be called the “State Compensatory Afforestation Fund- (Name of State)” under Public Accounts of such State:"

4. Now, therefore, in exercise of the powers conferred by sub-section (1) of section 4 of the Compensatory Afforestation Fund Act, 2016 (38 of 2016), the Governor, Himachal Pradesh is pleased to establish for the purposes of this Act, a special Fund to be referred as ‘State Compensatory Afforestation Fund (SCAF) (hereinafter referred to as ‘State fund’) Himachal Pradesh’ under interest bearing section of Public Account of the State of Himachal Pradesh under a distinct Minor Head: 129—Himachal Pradesh Compensatory Afforestation Fund (SCAF)’ below the Major Head: 8121—General and Other Reserve Funds’, with effect from the date of its publication in the official gazette.

5. The State Compensatory Afforestation Fund Himachal Pradesh shall be under the control of the State Government and managed by the State Authority. The financial regulations and procedures, in particular the procedure for drawing up and implementing the budget of the State Authority, shall be in accordance with the General Financial Rules, 2017 and the orders issued by the Central Government and the State Government in this regard from time to time.

6. There shall be credited into the State Fund of the State—

- (i) The unspent balance of all monies which has been transferred by the *adhoc* Authority to the State Compensatory Afforestation Fund Management and Planning Authority constituted in the State in compliance of guidelines dated the 2nd July, 2009;
- (ii) All monies transferable from the National Fund as per section 5 (a) of the Compensatory Afforestation Fund Act, 2016;
- (iii) All monies realised from user agencies by the State towards compensatory afforestation, additional compensatory afforestation, penal compensatory afforestation, net present value, catchment area treatment plan or any money for compliance of

conditions stipulated by the Central Government while according approval under the provisions of the Forest (Conservation) Act, 1980; and

- (iv) The funds recoverable from user agencies by the State in cases where forest land diverted falls within the protected areas, that is, areas notified under sections 18, 26A or 35 of the Wild Life (Protection) Act, 1972 for undertaking activities relating to the protection of biodiversity and wildlife.

7. The State Government may also credit to the State Fund constituted by it—

- (i) Grants-in-aid received, if any, by the State Authority;
- (ii) Any loan taken or any borrowings made by the State Authority;
- (iii) Any other sums received by the State Authority by way of benefaction, gift or donations.

8. The monies received in the State Fund shall be an interest bearing fund under public account of the State.

9. The balance in the State Fund shall be non-lapsable and will get interest as per the rate declared by the Central Government on year to year basis.

10. The monies available in the State Fund shall be disbursed and utilised in the following manner, namely:—

- (a) The money received for compensatory afforestation, additional compensatory afforestation, penal compensatory afforestation, catchment area treatment plan and for any other site specific scheme shall be used as per site-specific schemes submitted by the State along with the approved proposals for diversion of forest land under the Forest (Conservation) Act, 1980;
- (b) The monies received towards net present value and penal net present value shall be used for artificial regeneration (plantation), assisted natural regeneration, forest management, forest protection, forest and wildlife related infrastructure development, wildlife protection and management, supply of wood and other forest produce saving devices and other allied activities in the manner prescribed under Rule 5 of the Compensatory Afforestation Fund Rules, 2018;
- (c) The interest accrued on funds available in the State Fund and the interest accrued on all monies collected by the State Government, which has been placed under the *Ad-hoc* Authority and deposited in the nationalised banks, in compliance to the directions of the Supreme Court dated the 5th May, 2006, shall be used for conservation and development of forests and wildlife in the manner prescribed under Rule 6 of the Compensatory Afforestation Fund Rules, 2018;
- (d) All monies realised from the user agencies in accordance with the decision taken by the Standing Committee of the National Board for Wild Life constituted under section 5A of the Wild Life (Protection) Act, 1972 or the orders of the Supreme Court involving cases of diversion of forest land in protected areas shall form the corpus and the income there-from shall be used exclusively for undertaking protection and conservation activities in protected areas of the State including facilitating voluntary

relocation from such protected areas and in exceptional circumstances, a part of the corpus may also be used subject to prior approval of the National Authority;

- (e) Ten percent of amount realised from the user agencies which will be credited directly into the State Fund in a year shall be transferred to the National Fund as provided in section 3 (4) of the Compensatory Afforestation Fund Act, 2016;
- (f) The non-recurring and recurring expenditure for the management of a State Authority including the salary and allowances payable to its officers and other employees may be met from a part of the interest accrued on the amounts available in the State Fund, in the manner prescribed under Rule 6 (a) and 6(b) of the Compensatory Afforestation Fund Rules, 2018;

11. To regulate the manner of crediting the monies to the National Fund and State Fund in a year, the accounting procedure as may be finalised by the Central Government shall be adopted.

By order,
RAM SUBHAG SINGH,
Addl. Chief Secretary (Forests).

कार्यालय उपायुक्त मण्डी, जिला मण्डी (हिमाचल प्रदेश)

अधिसूचना

मण्डी—175 001, दिनांक 7 फरवरी, 2019

संख्या: पीसीएन—एमएनडी—।/(8)28/2015.—हिमाचल प्रदेश पंचायती राज अधिनियम—1994 की धारा—126 व हिमाचल प्रदेश पंचायती राज (सामान्य) नियम 1997 के नियम 124 के अन्तर्गत प्रदत्त शक्तियों का प्रयोग करते हुए मैं, ऋग्वेद ठाकुर (भा०प्र०स०), उपायुक्त मण्डी, जिला मण्डी (हिमाचल प्रदेश) एतद्वारा पंचायत समिति करसोग से निर्वाचित उपाध्यक्ष के नाम को निम्न सारणी के अनुसार जनसाधारण की जानकारी हेतु प्रकाशित करता हूँ :—

क्रम संख्या	पंचायत समिति का नाम	पदनाम	नाम व पता
1.	करसोग	उपाध्यक्ष	श्री कमल नयन पुत्र श्री दुर्गा नन्द, गांव थलटू डा० वगशाड, तहसील करसोग, जिला मण्डी (हि०प्र०) ।

हस्ताक्षरित /—
ऋग्वेद ठाकुर (भा०प्र०स०),
उपायुक्त मण्डी, जिला मण्डी, हि० प्र० ।

FOOD, CIVIL SUPPLIES & CONSUMER AFFAIRS DEPARTMENT

NOTIFICATION

Shimla-9, the 29th January, 2019

No. FDS.H(B)2-11/2014.—In exercise of the powers conferred upon me under clause 2(h) of the H.P. Trade Article (Licensing and Control) Order, 1981 and under clause 2 (g) of the H.P. Specified Articles (Regulation of Distribution) Order, 2003, I, Madan Chauhan (I.A.S.), Director,

Food, Civil Supplies & Consumer Affairs. H.P. hereby authorize Shri Sharvan Kumar Himalayan, Food, Civil Supply Officer, O/o District Controller, Food, Civil Supplies & Consumer Affairs, Shimla as Licensing Authority and Controller respectively to exercise all the powers of the Licensing Authority and Controller under the orders referred *supra* within the territorial jurisdiction of Shimla district till the posting/appointment of the District Controller, Food, Civil Supplies & Consumer Affairs, Shimla with immediate effect.

Sd/-

(MADAN CHAUHAN) I.A.S.

Director.

FOOD, CIVIL SUPPLIES & CONSUMER AFFAIRS DEPARTMENT

NOTIFICATION

Shimla-9, the 29th January, 2019

No. FDS.H(B)2-11/2014.—In exercise of the powers conferred upon me under clause 2(h) of the H.P. Trade Article (Licensing and Control) Order, 1981 and under clause 2 (g) of the H.P. Specified Articles (Regulation of Distribution) Order, 2003, I, Madan Chauhan (I.A.S.), Director, Food, Civil Supplies & Consumer Affairs. H.P. hereby authorize Kumari Pavitra Pundir, Food, Civil Supply Officer, O/o District Controller, Food, Civil Supplies & Consumer Affairs, Sirmaur at Nahan as Licensing Authority and Controller respectively to exercise all the powers of the Licensing Authority and Controller under the orders referred *supra* within the territorial jurisdiction of Sirmaur district till the posting/appointment of the District Controller, Food, Civil Supplies & Consumer Affairs, Sirmaur with immediate effect.

Sd/-

(MADAN CHAUHAN) I.A.S.

Director.

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla, the 07th September, 2018

No. Shram(A)6-5/2018 (Awards).—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court Shimla on the website of the Department of Labour & Employment Government of Himachal Pradesh :—

Sl. No	Reference/ Application	Title	Section
01	Ref. 75/2007	Ms. Gurvanti Sharma & Ors. V/s Factory Manager, M/s Super Cassettes Industries Limited, Baddi, District Solan, H.P.	10

02.	App. 72/2016	Sh. Amar Singh <i>V/s</i> The General Manager, The Tribunal, Chandigarh & Anr.	2-A
03.	App. 16/2017	Ms. Khem Lata <i>V/s</i> School Management Committee, Government Primary School, Kandaghat, Solan & Anr.	2-A
04.	App. 17/2017	Ms. Sandhya Mehta School Management Committee, Government Primary School, Kandaghat, Solan & Anr.	2-A
05.	Ref. 36/2015	Sohan Singh <i>V/s</i> M/s Indofarm Equipment Ltd. Village Thana, Baddi, District Solan, H.P.	10
06.	Ref.40/2017	Indermani <i>V/s</i> Executive Engineer, Bhaba Construction Circle HPSEB Limited Bhabanagar, Kinnaur.	10
07.	Ref. 64/2018	Sh. Satpal & Ors. <i>V/s</i> The Director of Ayurveda, Shimla & Anr.	10
08.	App.54/2017	Sh. Desh Raj <i>V/s</i> The Executive Director (Personal) Vidyut Bhawan, Shimla-4 & Anr.	2-A
09	Ref. 54/2016	Smt. Kanta Devi <i>V/s</i> Managing Director, Civil Supply Corporation, Kasumpti, Shimla, 9, H.P.	10
10.	Ref.17/2018	Sh. Randeep Singh <i>V/s</i> M/s Patel Engineering Limited, Kinnaur & Anr.	10
11.	Ref. 19/2018	Sh. Brijesh Singh M/s Patel Engineering Limited, Kinnaur.	10
12.	Ref. 16/2018	Sh. Ram Singh <i>V/s</i> M/s Patel Engineering Limited, Kinnaur & Anr.	10
13.	Ref. 20/2018	Sh. Mangal Dass <i>V/s</i> M/s Patel Engineering Limited, Kinnaur.	10
14.	Ref. 192/2017	Sh. Shekhar Thapa <i>V/s</i> M/s Patel Engineering Limited, Kinnaur.	10
15.	Ref. 194/2017	Sh. Ajay Kumar Sharma <i>V/s</i> M/s Patel Engineering Limited, Kinnaur.	10
16.	Ref. 195/2017	Sh. Yash Pal <i>V/s</i> M/s Patel Engineering Limited, Kinnaur.	10
17.	Ref. 196/2017	Sh. Ashu Chauhan <i>V/s</i> M/s Patel Engineering Limited, Kinnaur.	10
18.	Ref. 163/2017	Sh. Parmanand <i>V/s</i> M/s Patel Engineering Limited, Kinnaur.	10
19.	Ref. 79/2014	Sh. Satpal <i>V/s</i> M/s Gillete India Limited, Baddi	10
20.	Ref. 87/2018	Ms. Rukmani Sharma <i>V/s</i> L.R Group of Institute, Solan.	
21.	Ref. 138/2017	Workers Union <i>V/s</i> Registrar, L.R. Group of Institute, Solan.	
22.	Ref.132/2017	Sh. Balwant Sharma <i>V/s</i> Registrar, L.R. Group of Institute, Solan.	

23.	Ref. 58/2017	Sh. Rajinder Sharma V/s M/s Maxpower Infosystems (P) Ltd.	
24.	Ref. 12/2017	Sh. Navdeepak Kumar V/s M/s Balaji Powertronics, Parwanoo, District Solan, H.P.	

By order,
NISHA SINGH, IAS
Addl. Chief Secretary (Lab. & Emp.).

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, CAMP AT SOLAN

Ref. No. 75 of 2007

Instituted on 5-11-2007

Decided on 7-7-2018

Gurvanti Sharma, Kanta Thakur, Lalita Devi, Sushma Devi, Anshu Bala and Promila Devi c/o Smt. Gurvanti Sharma w/o Shri Rajinder Paul r/o Village Burawala, P.O Barotiwala, Tehsil Kasauli, District Solan, HP. . Petitioner.

Vs.

The Factory Manager, M/s Super Cassettes Industries Ltd., Village Bhilanwali Labana, Baddi, Tehsil Nalagarh, District Solan, HP. . Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioners : Gurvanti Sharma, & Anshu Bala in person.

For respondent : Shri Rahul Mahajan, Advocate.

AWARD

The reference for adjudication, sent by the appropriate government, is as under:

“Whether the Non-payment of subsistence allowance during the period of suspension to S/Smt. Gurvanti Sharma, Kanta Thakur, Lalita Devi, Sushma Devi, Anshu Bala & Promila Devi in contravention of the provisions of Model Standing Orders of H.P. Government framed under Industrial Employment Standing Orders, 1946 is legal & justified? If not, to what relief/compensation the above said 6 workers are entitled for?

“Whether the action of the management of M/s Super Cassettes Industries Ltd., village Bhilanwali Labana Baddi, Tehsil Nalagarh District Solan, H.P. to terminate the services of representatives of group of workers Sarv/M/s Gurvanti Sharma, Kanta Thakur (These two workers have been representative of the workers of Super Cassettes Industries Ltd., in the tripartite settlement dated 19-9-2006 signed between the management of M/s Super Cassettes Industries Ltd. village Bhilanwali Labana,

Baddi, Tehsil Nalagarh Distt. Solan, H.P. and Super Cassette Shramik Samooh and Lalita Devi Sushma Devi, Anshu Bala and Promila Devi who have been regular workers of the above said establishment for the last ten years on the grounds that the above said workmen failed to deliver the production as per the norms (norms not determined) by the management and further to conduct exparte enquiry against the above said workers by not allowing the above said workers to participate in the domestic enquiry and further terminate their services without service benefits, without notice and without compensation as per provisions of the Industrial Disputes Act is legal & justified? If not, to what relief and service benefits the above said workmen are entitled to?"

2. The petitioners have filed the claim petition in the shape of application wherein it has been stated that they have been working from eight years with the respondent company but in the month of April, 2007 they were suspended by the respondent by adopting the method of unfair labour practice and thereafter they have been dismissed. It has been stated in the petition that they be paid the wages for the months of April and May, 2007. On 23-5-2007, all the petitioners were not allowed to join their duties and the management had asked them to tender their resignation and when they had refused to resign, their services were terminated on 24-4-2007. That on 10-9-2006, a settlement was arrived at with the management and thereafter the management started victimizing the petitioners Kanta Thakur (since deceased) and Gurvanti Sharma who were the representatives of the workers. That the services of the petitioners were terminated by the management, by adopting unfair labour practices. With these averments, the aforesaid claim petition was filed by the petitioners.

3. By filling reply, the respondent contested the claim filed by the petitioner wherein preliminary objections have been taken *qua* concealment of true and material facts, maintainability, that the petitioners indulged in serious misconduct of 'go slow' etc. On merits, it has been asserted that the petitioners were employed with the respondent company on or after 1-6-2004 and earlier to their joining with the respondent they were the employees of M/s Super Music International. It is further asserted that the petitioners were employed in assembling section of Audio Cassettes Division and from the date of their joining, they were assembling 1450 cassettes per worker per day and they were paid production incentives @ 8 paise per additional cassette over and above 1450 cassettes. That in the year, 2006, a demand notice was raised by the workmen of respondent company which was duly replied by the respondent and conciliation was entered into by the Labour-cum-Conciliation Officer Baddi and a settlement dated 9-9-2006 was affected and as per the same Rs. 200/- per month was to be increased in the wages of the workmen and thereafter the petitioners intentionally and deliberately adopted tactics of go-slow and also threatened their co-workers and instigated them not to assemble 1480 cassettes for which show cause notices were pasted on the notice board asking the petitioners and co-workers of assembling section to adhere to the production norms but they did not reply to a single notice and also failed to adhere to the instructions of management to maintain the norms of 1480 cassettes and thereafter chargesheets were issued to the petitioners and other co-workers but no reply was submitted by them and then a domestic enquiry was conducted by appointing enquiry officer who conducted the enquiry in a fair and proper manner but the petitioners and other co-workers failed to turn up to attend the enquiry proceedings even after the publication of dates of the enquiry in the newspapers, hence, the enquiry officer was left with no other option but to record evidence of the management/respondent and thereafter the petitioner and other co-workers were suspended during the enquiry proceedings and suspension allowance was also sent to them through registered post but they had refused to receive the same. It is also stated that a fair and proper enquiry was conducted into the charges as leveled *vide* chargesheets dated 20-2-2007 and 6-4-2007. Subsequently the punishment of dismissal was given and the punishment of dismissal is commensurate with the misconduct. The respondent prayed for the dismissal of the claim filed by the petitioners in the shape of application.

4. In rejoinder, the petitioners controverted the allegations as made in the reply filed by the respondent.

5. On the pleadings of the parties, the following issues were framed on 20-10-2009 :—

- (1) Whether the non-payment of subsistence allowance during the period of suspension to Smt. Gurvanti Sharma, Kanta Thakur, Lalita Devi, Sushma Devi, Anshu Bala and Promila Devi in contravention of the provisions of Model Standing Orders of H.P. Government framed under Industrial Employment Standing Orders, 1946 is illegal and unjustified as alleged? . .OPP.
- (2) If issue No.1 is proved, to what relief the petitioners are entitled? . .OPP.
- (3) Whether the action of the management of respondent in terminating the services of petitioners without conducting just and fair enquiry is illegal and unjustified? . .OPR.
- (4) Whether the claim is not maintainable as alleged? . .OPR.
- (5) Relief.

6. Besides having heard the petitioners present in the court, I have also heard the learned counsel for the respondent and have also gone through the record of the case including the written arguments filed by both the parties.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:

Issue No. 1 : No

Issue No. 2 : Becomes redundant.

Issue No. 3 : Decided accordingly.

Issue No. 4 : No.

Relief : Reference partly answered in favour of the petitioners Gurvanti Sharma, Sushma Devi, Anshu Bala, Promila Devi, Kanta Thakur (now deceased) and against the respondent Devi per operative part of the award.

Reasons for findings

Issues No.1, 2 & 3 :

8. Being interlinked and correlated all these issues are taken up together for decision.

9. Before, I proceed further it is important to mention here that during the pendency of present reference one of the petitioners namely Kanta Thakur had expired and her legal heirs Shri Manjeet (husband) and Deepak (son) were allowed to be brought on record *vide* order dated 7.7.2011. It is also important to mention here that during the pendency of present reference one of the petitioners namely Lalita Devi had settled the dispute with the respondent *vide* order dated 6.1.2018 and now there is no dispute of petitioner Smt. Lalita Devi with the respondent arising out of present reference, therefore, the reference *qua* Smt. Lalita Devi is answered as settled.

10. In support of their case, the petitioners Kanta Devi (now deceased), Lalita Devi, Gurvanti Sharma and Anshu Bala appeared in the witness box and had made oral depositions. The petitioners Sushma Devi and Promila Devi had tendered their affidavits in their examination-in chief. All the aforesaid petitioners were cross examined by the learned counsel for the respondent. On the other hand the respondent examined Shri Anil Kumar Nijhawan, Factory Manager as RW-1 and Shri Sanjeev Sharma, enquiry officer as RW-2 and both of them had tendered their affidavits in their examination in chief and were cross-examined on behalf of the petitioners.

11. I have closely scrutinized the entire evidence on record, and from the closer scrutiny thereof, it has become clear that the petitioners were initially employed with M/s Super Music International Baddi and thereafter they were employed by the respondent (Super Cassettes Industries Baddi) after 01-06-2004 in the assembling section of Audio Cassettes Division and in the year 2006 a demand notice was raised by the workmen of the respondent company upon which a settlement was arrived at between the management and workmen before the Labour-cum Conciliation Officer, Baddi, on 9-9-2006. In clause-1 of the aforesaid settlement, it was agreed that the wages in the sum of ₹ 200/- per month will be increased and for the said increase in the wages, the workers will increase the production of cassettes. As per the case of the respondent after 1-2-2007 the petitioners intentionally and deliberately, adopted the tactics of "go slow" and also threatened co-workers and instigated them not to assemble 1480 cassettes per day which led to down fall in the production of respondent. The further case of the respondent is that thereafter show cause notices were pasted on the notice board asking the petitioners and co-workers of assembling section of audio cassette division to adhere to the production norms but they failed to adhere to the instructions of the management as such chargesheets dated 20-2-2007 and 6-4-2007 were issued to the petitioners. As per the chargesheets dated 20-2-2007 issued to petitioners Sushma Devi Ex. RW 2/E-22, Gurvanti Sharma Ex. RA/20-4, Anshu Bala, Promila Devi Ex. RW-2/G-9 and Kanta Thakur (since deceased) Ex. RP-14, the charges of "go slow", instigation of co-workers to go slow and as per the chargesheets dated 6-4-2007, Ex. RA-22/1, Ex. RA/22-4, Ex. RA/22- 6, Mark X-6, Ex. RA/22-2, the charge of deliberate refusal of official communications/charge-sheet were leveled against all the petitioners and thereafter the management of respondent company decided to conduct separate enquiries against all the petitioners and Shri Sanjeev Sharma was appointed as an enquiry officer to conduct separate domestic enquiries against all the petitioners but all the petitioners failed to participate in the enquiry proceedings and therefore *ex parte* enquiries were conducted in which the charges leveled against all the petitioners vide chargesheet dated 20-2-2007 Ex. RW-1/E-22, Ex. RA/20-4, Ex. RA-22/6, Ex. Ex. RW-2/G-13 and Ex. RA/20-2 and chargesheet 6-4-2007 Ex. RA-22/1, Ex. RA/22-4, Ex. RA/22-6, Mark X-6, Ex. RA/22-2 stood proved and thereafter 2nd show cause notices dated 13-6-2007 Ex. RA/25-3, Ex. RA/25-5, mark RP-4/V-8, mark X-32 and Ex. RP/23 along-with enquiry reports Mark-74, Ex. RW-2/H-1, Mark X-1, Mark XXX and Ex. RP/24 were issued to the petitioners and after that the services of all the petitioners were dismissed *vide* letters Ex. PA-27/3, Ex. RA-27/5, Ex. RA-27-1, Ex. RA-26/6 and Ex. RA 27/4.

12. In the written arguments filed on behalf of petitioners, it has been asserted that the petitioners were not associated in the enquiry by the management of respondent and the enquiry officer used to conduct the enquiry inside the factory of the respondent and the security guard did not allow the petitioners to enter the gate of the factory. It has further been asserted that the letters which have been shown to be posted to the petitioners are false and manipulated and that without the association of the petitioners, the domestic enquiry is illegal and the same is not binding upon them which is against the principles of natural justice. Now, the question which arises for consideration before this Court is as to whether the petitioners were not allowed to participate in the enquiry by the respondent. From the perusal of the entire evidence on record, it has become clear that the respondent management had issued letters Mark X, Mark RP-3/12, Mark RP-4/R, Ex. RW 2/G-13, Ex.RW-2/F-25, to all the five petitioners except Lalita Devi intimating them about

conducting of domestic enquiry and the appointment of Shri Sanjeev Sharma as an enquiry officer. The enquiry officer had also intimated the petitioners about the dates of the enquiry *vide* letters Ex. RW-2/D, mark RP-3/13, Ex. RW-2/B-2, Ex. RW-2/D-30, Ex. RP-18. RW-2 Shri Sanjeev Sharma, enquiry officer categorically deposed that on being appointed as an enquiry officer he wrote letters to the petitioners through registered post intimating them about the enquiry and dates of enquiry but the petitioners had refused to receive the said letters and thereafter the notices of the enquiry were published in the newspaper "Divya Himachal" on 23-5-2007 Ex. RW-2/J-17, Ex. RW-2/F-19, Ex. RW-2/G-5, Ex. RW-2/K-6 but despite that none appeared on behalf of the petitioners before him and on 30-5-2007, the petitioners were proceeded against *ex parte*. He further deposed that he recorded the statements of Shiv Kumar Singh and Suresh Kalra as the witnesses of the management and the documents filed by the management were exhibited and thereafter the enquiries were concluded on 31-5-2007. He also deposed that the enquiry reports were submitted to the management of respondent company in which the charges leveled against the petitioners stood proved. He was cross-examined at length however nothing favourable could be elicited from his lengthy cross examination which could lead this Court to draw an inference that the petitioners were wrongly proceeded against as *ex parte*. The perusal of the record reveals that various letters were issued to the petitioners through UPC and registered post regarding the conducting of domestic enquiry against them on their addresses mentioned in the employment form but they have refused to receive the aforesaid letters. The onus was upon the petitioners to prove by leading cogent and satisfactory evidence on record that they were not properly served in the enquiry and the letters were not sent on their correct addresses. However, no satisfactory evidence *qua* the same has been led by the petitioners rather all the petitioners have admitted their addresses to be correct in their cross-examination. The respondent had also placed on record in evidence the letters along with envelopes and the endorsement of postal authority regarding the refusal of the letters by the petitioners. The perusal of the record further reveals that the petitioners have filed separate replies mark R-67, Mark RP-3/11, Ex. RP-25 and mark RP-4/P to the chargesheet dated 20-2-2007 which fact would show that the petitioners were well aware about the enquiry proceedings and they have deliberately chosen not to appear before the enquiry officer. Therefore, in view of the entire evidence on record, it cannot be said that the petitioners were not properly served and were wrongly proceeded against as *ex parte*. The aforesaid facts would clearly show that the petitioners were well aware about the enquiry proceedings which were being conducted against them but they had failed to participate in the enquiry proceedings despite the fact that they were aware about the same. Now, the question which arises for consideration before this Court is as to whether the petitioners can allege violation of principles of natural justice despite being aware about the enquiry proceedings. The Hon'ble Supreme Court in a catena of judgments held that the employee failing to participate in the enquiry proceedings being aware of the enquiry, cannot complain violation of the principles of natural justice. In AIR 2008 SC (Supl.) 1542, Board of Directors H.P.T.C Vs. K.C Rahi, it has been held that if an employee does not participate in the enquiry proceedings being well aware of departmental enquiry, he is estopped from raising the question of non-compliance of the principles of natural justice. The relevant portion of the aforesaid judgment is reproduced as under:

".....The Tribunal also held that from the representation dated 09-08-1993 and 19-10-1993 it would clearly show that the respondent was well aware of the departmental enquiry which was initiated against him, however, he intentionally avoided service of notice and did not participate in the enquiry proceedings and, therefore, he was estopped from raising the question of noncompliance of the principle of natural justice.....".

Furthermore, in (2008)-4 SCC 42, Pepsu Road Transport Corporation Vs. Rawel Singh, it has been held as under:

"15..... We are not entering into correctness or otherwise of the allegations of the Corporation. One thing, however, is certain that in spite of service of

show cause notice, the respondent failed to appear at the enquiry and the Enquiry Officer had to proceed with the enquiry in absence of the respondent.

16. Apart from that it is also clear from the record that so far as the charge as to unauthorized absence of the respondent is concerned, the same is duly established from the record. The Enquiry Officer, in our opinion, rightly observed that charges (ii) and (iii) were consequential in nature and based on charge (i) and hence all the charges can be said to have been proved against the respondent. In our judgment, the Labour Court was wholly wrong in holding that enquiry was not fair. To us, it is not a case of not extending an opportunity to the employee but not availing of opportunity by the employee. Therefore, the finding recorded by the Labour Court that the enquiry was vitiated being violative of natural justice and fair play is based on 'no evidence' and must be set aside".

Similarly, in (1997) 10 S.C.C 386, Ranjan Kumar Mitra Vs. Andrew Yule & Co. Ltd., and others it has been observed as under:

"1. In view of the fact that the appellant's services were terminated after an enquiry in which the appellant chose not to participate, we are of the view that the appellant cannot assail his termination on merits even assuming that the writ petition filed by him in the High Court was maintainable. For this reason, it is not necessary to examine the correctness of the High Court's view that the writ petition was not maintainable. The dismissal of the appeal by this Court is, therefore, not to be construed as an expression of any opinion on the merits of the view taken by the High Court on the question of maintainability of the writ petition."

13. Therefore, in view of the aforesaid decisions of Hon'ble Supreme Court, the petitioners are estopped from raising the plea of non-compliance of principles of natural justice as they had failed to participate in the enquiries despite being aware about the enquiry proceedings.

14. From the perusal of the entire evidence on record, it has also become clear that the petitioners were suspended *w.e.f* 25-5-2007 and thereafter the respondent had sent the subsistence allowance to the petitioners through cheques, however, the petitioners have refused to accept the aforesaid letters enclosing the subsistence allowance by way of cheques mark R-85-86, Mark RP 3/4, mark 39 and 40, mark RP/29 and RP-32 and mark RP-4/U-18 and Mark RP-4/U19. Therefore, it can not be said that the non-payment of subsistence allowance during the period of suspension to the petitioners in contravention of the provisions of Model Standing Orders of H.P. Government framed under Industrial Employment Standing Orders, 1946 is illegal & unjustified.

15. The charges leveled against the petitioners *vide* chargesheets dated 20-2-2007 Ex. RW-1/E-22, Ex. RA/20-4, Ex. RA- 22/6, Ex. Ex. RW-2/G-13 and Ex. RA/20-2 and chargesheets dated 6-4-2007 Ex. RA-22/1, Ex. RA/22-4, Ex. RA/22-6, Mark X-6, Ex. RA/22-2 were regarding the misconduct of go slow, instigating the workers to adopt go slow tactics and refusal to receive the official communications and not adhering the instructions of the respondent management. I have gone through the enquiry proceedings and also enquiry reports and the aforesaid charges of misconduct against the petitioners stood proved during the course of enquiry. The 2nd show cause notices dated 13-6-2007 Ex. RA/25-3, Ex. RA/25-5, mark RP-4/V- 8, mark X-32 and Ex. RP/23 along-with enquiry reports Mark-74, Ex. RW-2/H-1, Ex. RW-2/K-1, Ex. RW-2/G-1 and Ex. RP/24 were also issued to the petitioners which were also refused by the petitioners and thereafter their services were dismissed. Now, the next question which arises for consideration before this Court is as to whether the punishment of dismissal imposed upon the petitioners is disproportionate to the gravity of the misconduct.

16. It is a settled law that go-slow, whether as a concerted action by the workmen or by an individual workman, in reducing production is a breach of duty and has been condemned as

misconduct in industrial adjudication. An employee who deliberately works slowly and thereby curtails production or does not complete a job in proper time, is guilty of intentional omission of duty, which would constitute misconduct. It is a serious misconduct as it is an insidious method of undermining the stability of a concern. For while delaying production and thereby reducing output, workmen claim to have remained employed and thus to be entitled to full wages. Go-slow may be indulged in by an individual workman either in one section or different sections or in one shift or both shifts effecting the output in varying degrees and to different extent depending upon the nature of the product and the productive process. Therefore, reduced production, refusal to give the agreed output, deliberately working slow, not completing the job in a proper time, is a breach of duty. It is a crude device to defy the norms of work. It is dishonesty, in as much as, the workman claim wages for the work which he has not done, and claims full wages for the reduced output. The workman is guilty of intentional omission of duty. It has been condemned as misconduct in Industrial adjudication. It is not a case of inefficiency or slackness. It is a positive act. It is quite incompatible with the express and implied terms of relationship of master and servant. That is the edifice of contract of employment. It need not be specifically mentioned in the contract of employment or in the standing orders. Therefore, not performing the stipulated work deliberately and not giving the agreed output for which wages are paid and received constitute a grave misconduct and is one of the most pernicious practices that harm the industry than the total cessation of work. **In the case of Bharat Sugar Mills Ltd. v. Jai Singh & Ors. reported in (1961) II LLJ 644(SC)** while dealing with the misconduct of go-slow, it has been observed by the Hon'ble Apex Court as under:

"...go -slow which is a picturesque description of deliberate delaying of production by workmen pretending to be engaged in the factory is one of the most pernicious practices that discontented or disgruntled workmen some time resort to. It would not be far wrong to call this dishonest, for while thus delaying production and thereby reducing the output, the workmen claim to have remained employed and thus to be entitled to full wages. Apart from this also, "go slow" is likely to be much more harmful than total cessation of work by strike. For, while during a strike much of the machinery can be fully turned off during the "go slow" the machinery is kept going on a reduced speed which is often extremely damaging to machinery parts. For all these reasons "go slow" has always been considered a serious type of misconduct.

Reference may also be made to a judgment rendered by the Hon'ble **Bombay High Court in Sonaba Baburao Dalvi vs. Factory Manager, Raja Bahadur Motilal Mills Ltd., 2000 (84) FLR 941 (Bom.)** where it was observed as under:

"If from the evidence and material on record in the enquiry which is confirmed as fair and proper the only conclusion which can be drawn is that the production given by the petitioner was lower than the production given by the others and it was less than 8500 ends. It cannot be said that W.P.(C)2314/2012 Page 9 of 17 there was absolutely no material to show that the production given by the petitioner was lower than the production given by the others. The petitioner has not denied or refuted the figures of production produced by the respondent company before the Enquiry Officer. The net result which we have to see is the figures of the low production on the record of the enquiry. Therefore, High Court held that the respondent company was justified in dismissing the petitioner from employment."

17. Hence, from the aforesaid decisions, it has become clear that go slow has always been considered as serious type of misconduct. Now, the question which arises for consideration before this Court is as to whether this Court can interfere in the punishment of dismissal from service imposed upon the petitioners by the respondent. **In (2005) 3 S.C.C 134, Mahindra and Mahindra Ltd. Vs. N.B Narawade,** it has been held by the Hon'ble Supreme Court that after introduction of

section 11-A in the Industrial Disputes Act certain amount of discretion is vested with the Labour Court/Tribunal in interfering with the quantum of punishment whereby the concerned workman is found guilty of the misconduct. The relevant portion of the aforesaid judgment is reproduced as under:

“20. It is no doubt true that after introduction of Section 11- A in the Industrial Disputes Act, certain amount of discretion is vested with the labour court/Industrial Tribunal in interfering with the quantum of punishment awarded by the Management where the workman concerned is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of this Court referred to hereinabove and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised under Section 11-A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which requires the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment. In the absence of any such factor existing, the Labour Court cannot by way of sympathy alone exercise the power under Section 11-A of the Act and reduce the punishment.” (emphasis supplied)

18. It is clear from the aforesaid decision of the Hon'ble Supreme Court that although this Court has ample powers to interfere with the punishment imposed upon the workman, the power is not arbitrary and it is to be exercised judicially and in accordance with law. The punishment imposed upon the workman can be interfered only if the Court is satisfied that the punishment is wholly and shockingly disproportionate to the nature of misconduct proved against the workman or if there are any mitigating circumstances including the past conduct of the workman which may persuade the Court to reduce the punishment. In a case decided by our own Hon'ble High Court on 8-9-2017, LPA No. 4 of 2017 titled as M/s Cosmo Ferities Ltd. Vs. State of H.P. and others, a compensation in the sum of ₹ 3.5 lakhs was awarded to the workman on the basis of the fact that an alternative submission was made by the management that without conceding that the enquiry was just, fair and proper, if the Court comes to the conclusion that the enquiry is bad than the workman be given compensation in lieu of reimbursement as the workmen had put in uninterrupted service of more than ten years with the company.

19. In the present case also, the petitioners remained in service with the respondent for a period of approximately one year or above. It is also not disputed that the respondent had closed down its operation and business permanently at its work place at Baddi. Moreover, it has become clear from the perusal of record that the petitioners are poor workers and since the respondent had paid a sum of ₹ 70,000/- to one of the petitioners namely Lalita Devi during the pendency of present reference by way of amicable settlement who was also similarly situated as the petitioners and also in view of the fact that during the pendency of the present reference petition the respondent had offered a sum of ₹ 55000/- to each of the petitioners by way of amicable settlement *vide* order dated 6-1-2018, therefore, it would be in the interest of justice if the respondent is directed to pay a sum of ₹ 70,000/- to each petitioner. Accordingly, issues No. 1 to 3 are decided partly in favour of the petitioners.

Issue No.4 :

20. In support of this issue, no evidence has been led by the respondent. However, the petitioners have filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioners and against the respondent.

Relief:

As a sequel to my above discussion and findings on issues No. 1 to 4, the claim of the petitioners succeeds in part and is hereby partly allowed with the result the respondent is directed to pay a sum of ₹ 70,000/- to petitioners namely Gurvanti Sharma, Sushma Devi, Anshu Bala and Promila Devi and ₹ 70,000/- to LR's of petitioner Kanta Thakur (since deceased) in equal proportion within a period of 30 days from the date of publication of this award failing which the same shall carry interest @ 9% per annum from the date of publication of award till its realization. The share of minor son of petitioner Kanta Thakur (since deceased) namely Deepak be invested in the shape of fixed deposit till he attains the age of majority. The reference is thus ordered to be answered partly in favour of the petitioners and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 7th day of July, 2018.

Sd/-
 (SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla Camp at Solan.

**IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

App. No. 72 of 2016

Instituted on 22-6-2016

Decided on 24-7-2018

Amar Singh Verma s/o late Shri Hira Ram r/o Village Bhadron, P.O Hawan, Tehsil Ghumarwin, District Bilaspur, H.P. . Petitioner.

Vs.

1. The General Manager, The Tribune, Sector 29-C, Chandigarh.
2. The Office Incharge, Sub Office, The Tribune Shimla, H.P. . Respondents.

Petition under section 33-C (2) of the Industrial Disputes Act, 1947 for executing the award dated 18-4-2016 and 22-10-2007 in reference No. 162 of 1998.

For petitioner : Shri S.D Sharma, Advocate.

For respondents : Shri Vijay Arora, Advocate.

ORDER

Facts in brief as narrated in the application are that this Court had passed an award in reference No. 162 of 1998 firstly on 18-4-2006 and thereafter on 22-10-2007 when the case was

remanded back by the Hon'ble High Court *vide* order dated 14-6-2007 passed in CWP No. 582 of 2006. That as per award, the respondent No. 1 had failed to make the payment of "money due" to the petitioner as the respondent No.1 had only paid an amount of ₹ 61,430/- to the petitioner whereas the money due in terms of award and the service benefits were denied to him. It is further averred that the respondents failed to execute the award in favour of the petitioner by granting him the pay scales, allowances, perks strictly as per Wage Board as applicable to other similar situated persons employed with the respondents. That the petitioner made number of representations to the respondent No.1 to execute the award in *toto* but of no avail. Against his back-drop it has been prayed that the respondents be directed to execute the award passed in favour of the petitioner in reference No. 162 of 1998 and release money due to the petitioner and other service benefits.

2. By filing reply, the respondents contested the claim of the petitioner wherein preliminary objections have been taken *qua* maintainability, that no enforceable cause of action has accrued in favour of the petitioner to file and maintain the present application and the petition is hopelessly time barred. On merits, it has been asserted that the respondents have paid the entire amount to the petitioner in accordance with the award passed by this Court and the payment of ₹ 61430/- was made to the petitioner on 27-11-2007 on account of arrears of wages (25%) and he was taken back in service as Assistant at Bathinda *w.e.f.* 8.3.2008 after furnishing of medical certificate by the petitioner. It is further asserted that the petitioner had worked with the respondents on casual basis for the period from 8-3-2008 to 7-8-2008 and thereafter he submitted his resignation on 7-8-2008 which was accepted by the General Manager. The petitioner had raised the issue again after so many years and filed an application before the o/o Labour Officer, Shimla. Though, there was no merit in the claim of the petitioner yet without prejudice to the interest of the Trust and with a view to put a quietus on the matter ₹ 10,260/- was decided to be paid to him, however, the petitioner refused to accept the payment through cheque on the premise that he would not sign the receipt for the cheque as full & final settlement of the dispute. That as per the award the petitioner was to be reinstated with 25% back-wages and the said directions were duly complied with the respondents. The respondents prayed for the dismissal of the petition.

3. Rejoinder not filed. On the pleadings of the parties, the following issues were framed by this Court on 12-7-2017.

1. Whether the respondents have failed to execute the award dated 18-4-2006 and order dated 22-10-2007 passed in reference No. 162 of 1998? . .OPP.
2. If issue No.1 is proved in affirmative, to what relief the petitioner is entitled to?. .OPP.
3. Whether the petition is not maintainable as alleged? . .OPR.
4. Whether no cause of action has accrued in favour of the petitioner to file the present petition as alleged? . .OPR.
5. Relief.

4. I have heard the learned counsel for the parties and also gone through the record of the case carefully.

5. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No. 1 No.

Issue No. 2 Becomes redundant.

Issue No. 3 No.

Issue No. 4 Not pressed.

Relief: Application dismissed per operative part of order.

Reasons for findings

Issues No. 1 :

6. To prove issue no.1 the petitioner stepped into the witness box as PW-1 to depose that he was appointed as Tele Printer Operator by the respondents on 22-8-1989 and an award dated 18-4-2006 mark P-1 was passed by this Court in his favour in reference No. 162 of 1998 and thereafter an order dated 22.10.2007 Mark P-2 was passed by this Court in reference No. 162 of 1998. He further stated that the respondent had not properly implemented the aforesaid award and order passed in his favour as per the Wage Board recommendations from time to time and the respondents have not given him the proper pay scale, allowances and service benefits which were admissible to him under the award. He also stated that at the time of passing of award similarly situated persons were drawing salary ranging from ₹ 40,000/- to ₹ 50,000/- per month and the respondents had only paid him ₹ 61430/- which amount is wholly inadequate in terms of the award. In cross-examination he admitted that as per the award the direction was issued to the respondent for his re-instatement in service *w.e.f.* 6-10-1994 alongwith 25% backwages. He further admitted that he was re-instated in service *w.e.f.* 8-3-2008. He also admitted that he had resigned from service on 7-8-2008. He admitted that the respondent management had paid him ₹ 61430/- @ 25% back wages on 21-11-2007. He further admitted that he had made a complaint before the Labour Officer that the respondent had not implemented the award properly. He also admitted that he had not filed any recommendation of Wage Board before this Court. He admitted that as per award, he was re-instated alongwith 25% back-wages by the respondents.

7. On the other hand, the respondents have examined one Shri Sunil Mital, Manager HR as RW-1, who tendered in evidence his affidavit Ex. RW-1/A wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence resignation letter dated 7-8-2008 Ex. RW-1/B, letter accepting the resignation Ex. RW-1/C, letter from the office of Labour Officer, Shimla dated 26-9-2012 Ex. RW-1/D, copy of cheque amounting to ₹ 10260/- in favour of the petitioner Ex. RW-1/E, reply dated 4-12-2012 filed by the respondent to the notice issued by the Labour Officer Ex. RW-1/F, request letter sent by the petitioner to the respondents with regard to issuance of fresh cheque dated 8-8-2014 amounting to ₹ 10260/- Ex. RW-1/G, letter dated 26-8-2013 Ex. RW-1/H and letter dated 3-8-2013 Ex. RW-1/J. In cross-examination, he admitted that for fixing the wages of the employees of newspaper, the Wage Boards are being constituted from time to time. He denied that after passing of award by this Court the petitioner was wrongly engaged on casual basis. He further denied that the petitioner was not paid 25% back-wages in terms of the award passed by this Court. He also denied that full & final settlement amount has not been paid to the petitioner by them. He denied that the petitioner had to resign from service as he was not paid his dues in terms of award.

8. I have closely scrutinized the entire record of the case and after the closure scrutiny thereof it has become clear that on 18-4-2006, an award was passed by this Court in favour of the petitioner and against the respondents in reference No. 162 of 1998 wherein the petitioner was ordered to be reinstated in service *w.e.f.* 6-10-1994 with backwages @ 25%. However, the aforesaid award was challenged by the respondents by way of writ petition No. 582 of 2006 and the reference was remanded back to this Court by the Hon'ble High Court on 14-6-2007 and thereafter on 22-10-2007, the reference No. 162/1998 was again allowed by this Court in view of the

statement of Shri Ashok Kumar, Deputy Manager of respondents that the respondents are prepared to implement the award passed in reference No. 162 of 1998 dated 18-4-2006 as such the petitioner was ordered to be reinstated in service with backwages @ 25%. It is also not disputed that thereafter the petitioner was reinstated in service *w.e.f.* 8-3-2008 and he had worked with the respondents till 7-8-2008 and thereafter he submitted his resignation letter Ex. RW-1/B on 7-8-2008 which was accepted by the respondents *vide* letter Ex. RW-1/C. It is also clear from the record that a payment of ₹ 61,430/- was made to the petitioner on 21-11-2007 by the respondents in lieu of 25% backwages.

9. Now, the question which arises for consideration before this Court as to whether the respondents had not implemented the award dated 18-4-2006/22-10-2007 passed in reference No. 162 of 1998. The onus was upon the petitioner to prove by leading cogent evidence on record that the award in question was not implemented in its letter and spirit by the respondents. However, except for the bald statement of the petitioner, there is no other cogent and satisfactory evidence on record led by the petitioner in this respect. Rather, the petitioner admitted in his cross-examination that the respondents had paid him ₹ 61,430/- @ 25% back wages on 21-11-2007. Though, in his examination in chief the petitioner has deposed that the respondents had not properly implemented the award as per the Wage Board recommendations from time to time and the respondents had not given him the proper pay scale, allowances and service benefits which were admissible to him under the award. However, the petitioner has failed to place on record any recommendations of the Wage Boards with respect to the wages admissible to the petitioner. The petitioner has also failed to produce any record with respect to the wages drawn by the similarly situated persons. Neither any record pertaining to wages drawn by similar situated persons has been produced nor summoned by the petitioner. The petitioner has also failed to lead any evidence as to what was his last drawn salary and what amount was specifically due to him by the respondents. It is a settled law that the obligation to lead evidence to establish an allegation made by a party is upon the party making the allegation. The test would be as to who would fail if no evidence is led. The party making the allegation and seeking the redressal must seek an opportunity to lead evidence. However, as observed earlier the petitioner has failed to produce any cogent and satisfactory evidence on record to prove his case. Therefore, in the absence of any cogent and satisfactory evidence on record, it cannot be said that the respondents have not implemented the award in its letter and spirit. Moreover, the present application has been filed by the petitioner after a period of 9 years and no explanation has been furnished by the petitioner as to why he remained silent for a period of nine years in making the application before this court if the respondents had not implemented the award in its letter and spirit as alleged by the petitioner. Furthermore, in terms of award dated 22-10-2007, the petitioner was reinstated in service and has accepted ₹ 61,430/- as backwages @ 25% on 21-11-2007 without any protest and now it does not lie in the mouth of the petitioner to say that the award dated 18-4-2006/22-10-2007 has not been implemented in its letter and spirit by the respondents.

10. Therefore, in view of my foregoing discussion, it cannot be said that the respondents have failed to execute the award dated 18-4-2006/order dated 22-10-2007 passed in reference No. 162 of 1998. Accordingly, this issue is decided in favour of the respondents and against the petitioner.

Issue No. 2 :

11. Since, the petitioner has failed to prove issue No.1, this issue becomes redundant.

Issue No. 3 :

12. In support of this issue nothing has been shown by the respondent which could go to show as to how the present application is not maintainable. Therefore, this issue is decided in favour of the petitioner and against the respondents.

Issue No. 4 :

13. During the course of arguments, this issue was not pressed by the learned counsel for the respondents, hence, the same is decided in favour of the petitioner and against the respondents.

Relief/Final order

As a sequel to my foregoing discussion on issues No.1 to 4 above, the present application filed by the petitioner deserves dismissal and accordingly the same is dismissed. File after completion be consigned to records.

Announced in the open Court today on this 24th day of July, 2018.

Sd/-
 (SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

App. No. 16 of 2017

Instituted on 19-1-2017

Decided on 24-7-2018

Khem Lata r/o Village Jadari, P.O & Tehsil Kandaghat, District Solan, H.P. . Petitioner.

Vs.

3. The President/Secretary, School Management Committee, Government Primary School Kandaghat-1, Tehsil Kandaghat, District Solan, H.P.

4. The Block Elementary Education Officer Educational Block, Kandaghat, Tehsil Kandaghat District Solan, H.P. . Respondents.

Petition under section 2-A (2) of the Industrial Disputes Act, 1947

For petitioner : Shri Niranjan Verma, Advocate.

For respondent No.1 : Shri Gaurav Sharma, Advocate.

For respondent No.2 : Shri Mahinder Singh, ADA.

ORDER

Facts in brief as narrated in the application are that the petitioner was initially appointed as helper under the scheme of Midday meal Worker on 23-5-2008 in Government Primary School Kandaghat and she worked continuously upto 10-6-2016 and thereafter she received a letter by post

from the respondent No.1 in which her services were terminated *w.e.f.* 11-6-2016. It is further averred that the services of the petitioner were terminated without complying with the provisions of section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred as Act) as the respondent No.1 always tried to dispense with the services of the petitioner without any cause and the attitude of the respondent No.1 towards the petitioner was very vindictive and even the petitioner had tried to give her best performance during the duty hours but instead of getting any admiration from the respondents, her services were dispensed with by respondent No.1. That the petitioner worked to the entire satisfaction of the School Management Committee (hereinafter referred as to Committee) since her appointment but in the year, 2015, when new committee came into existence, they were adamant to terminate the services of the petitioner. It is also averred that the President and Secretary of the Committee order the petitioner and her co-worker orally to carry the construction material *i.e* sand, grit, bricks *etc.* from road side to school because some construction was going on but the petitioner refused to do the labour work and for that reason the President and Secretary of the Committee got annoyed and bent upon to terminate the services of the petitioner and ultimately her services were terminated without issuing any notice and conducting of enquiry. That thereafter the petitioner filed a complaint to the respondent No. 2 on 6-6-2016 upon which the Committee organized a SMC meeting on back date *i.e* 4-6-2016 in which they have decided to terminate the services of the petitioner. It is further averred that the petitioner had worked continuously during the aforesaid period and had completed 240 days in each calendar year and the respondents have engaged junior to the petitioner who are still working in the school and even no opportunity of being heard was given to the petitioner before terminating her services. Against this backdrop a prayer has been made that the respondents be directed to re-engage the petitioner with all consequential benefits and seniority.

2. By filing reply, the respondent No.1 contested the claim of the petitioner wherein preliminary objections have been taken *qua* maintainability, that the petitioner has not approached this Court with clean hands and estoppel. On merits, it has been asserted that the petitioner was engaged as helper under Mid Day Meal Scheme by the Committee as per the guidelines of Himachal Government. That the petitioner and her co-worker become hostile and arrogant in their behavior with the SMC and further used to obstruct in the smooth functioning of the Mid Day meal Scheme and never coordinated with the SMC given instructions and the petitioner was always found negligent and irresponsible in performing her duties and whenever being questioned by the SMC on account of irregularities, the petitioner used to indulge in misbehaving with the SMC and she never used to follow the instructions given by SMC regarding maintaining the quality of the food and providing food to small children at school in a hygienic manner. It is further asserted that the SMC meetings were presided over by the President, members and the parents of the students in order to discuss the efficient functioning of the SMC and the minutes of each meetings and decision/instruction taken was recorded in the SMC register which was duly signed by the President, members and parents of the students present at the time of the meetings and was kept as a record for future references and on several intervals the irregularities, adamancy and arrogance of the petitioner and her co-worker were brought on record in SMC meetings. That on 30-6-2014, SMC meeting was held and instructions were given to the petitioner and her co-worker to work as per rule and regulation and to provide mid-day meal to the students in a proper and arranged manner and on 5-9-2014, a SMC meeting was held whereby the petitioner was instructed to sign the stock register in future but the petitioner stopped to sign the stock register despite several requests and on 16-3-2015, the SMC *vide* its office order strictly instructed the petitioner and her co-worker to serve food in hygienic manner and to wash the utensils on the same day but the petitioner and her co-worker refused to sign the office order and on 15-5-2015, the petitioner and her co-worker were instructed not to have indifferent attitude towards students while serving meals to them and on 8-6-2015 in SMC meeting it was found that the petitioner and her co-worker refused to take responsibility of cooking gas and weighing scale which was primarily their duty and on 4-7-2015 SMC meeting was held whereby the petitioner and her co-worker refused to follow the

instruction/work assigned to them by the SMC and even the complaints regarding disposing of waste food material in open was received from the adjoining residents and *vide* office order 48/15 much irregularities were in the working of both mid day meal worker were found whereby students were engaged for performing their duties and further utensils were left unwashed and on 1-8-2015, a SMC meeting was held whereby petitioner and her co-worker misbehaved with the SMC and thereafter an enquiry was conducted by the Block Elementary Education Officer *vide* letter dated 14-9-2015 and the irregularities in the working of the petitioner and her co-worker was found by BEEO and a warning was issued to the petitioner and then on 5-3-2016 SMC meeting notice was served upon the petitioner alongwith her co-worker regarding their absence in annual distribution function. It is also asserted that decision regarding discharging the services of the petitioner alongwith her co-worker was taken in a combined SMC meeting which was also signed by the parents of the students and since the mid-day workers are appointed as part time workers by the SMC on contractual basis, hence, no question of completion of 240 days arise and even as per the guidelines of the government, the candidates hired as helper under the guidelines by the SMC shall have no right to claim regularization/absorption/appointment as regular employees under the State Government. It is denied that the respondent No.1 has engaged juniors to the petitioner who are still working in the school. It is asserted that new appointment was done in accordance with the rules and in fair manner and also a SMC meeting was conducted on 16-6-2016 whereby new cook and helper were appointed. It is denied that the petitioner was not given opportunity of being heard and no notice was served upon her. It is asserted that three notices dated 4-7-2015, 5-3-2016 and 4-6-2016 were issued and served upon the petitioner and her co-worker. The respondent No.1 prayed for the dismissal of the claim petition.

3. By filing separate reply, respondent No. 2 contested the claim of the petitioner wherein preliminary objection *qua* maintainability has been taken. On merits, it has been asserted that the petitioner was given full opportunity of being heard and enquiry was conducted by the respondent No. 1 on 9-6-2016 and found that petitioner and her co-worker were not working properly and their behavior was not proper. It is further asserted that the petitioner was a part time worker. It is denied that the petitioner had completed 240 days in any calendar year. It is further denied that the respondent No. 2 has illegally terminated the services of the petitioner. The respondent No. 2 also prayed for the dismissal of the petition.

4. Rejoinder not filed. On the pleadings of the parties, the following issues were framed by this Court on 7-9-2017.

1. Whether the termination of the services of the petitioner *w.e.f.* 11-6-2016 without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified? . .OPP.

2. If issue No.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? . .OPP.

3. Whether the petition is neither competent nor maintainable as alleged? . .OPR.

4. Relief.

5. I have heard the learned counsel for the parties and also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No. 1 No.

Issue No. 2 Becomes redundant.

Issue No. 3 No.

Relief: Application dismissed per operative part of order.

Reasons for findings

Issues No. 1 :

7. To prove issue No.1 the petitioner stepped into the witness box as AW-1 to depose that she was posted as helper under the mid-day meal work scheme on 23-5-2008 in Government Primary School, Kandaghat-1 Solan and she worked continuously till 10-6-2016 and her services were terminated *w.e.f.* 11-6-2016 without issuing any notice and without conducting any enquiry and paying any retrenchment compensation to her. She further stated that she had completed 240 days in every calendar year/preceding year. She tendered in evidence her termination letter Ex. AW-1/A, copy of demand notice Ex. AW-1/B and copy of conciliation proceedings mark AX. She stated that the School Management Committee used to direct them to carry the construction material and she used to carry the same and since she was the mid day meal worker/cook, therefore, after some time she refused to carry the construction material and as such the respondent No.1 got annoyed and threatened her to terminate her services. She further stated that she had written a letter mark AY to BEEO Kandaghat and thereafter her services were terminated. She also stated that the parents of the students of the school had also written a letter dated 25-7-2016 to BEEO Mark AY-1 and Deputy Director Education, District Solan Mark AY-2 regarding the fact that their signatures were obtained fraudulently on the proceedings register and after her termination, the respondents had engaged fresh hand namely Rita as cook. In cross examination on behalf of respondent No.1 she admitted that her services were engaged as per the guidelines mark R-1, issued by the State Government. She further admitted that SMC Meeting is presided over by the President. She denied that her services were not satisfactory and she did not use to serve the food properly. She further denied that she used to disobey the orders of her superiors. She also denied that on 30-6-2014 a complaint was made against her in the SMC meeting that she was not serving the food properly. She denied that on 5-9-2014 a complaint mark R-3 was made against her that she was not signing the stock register. She denied that on 16-3-2015 an order mark R-4 was issued to her that she was not serving the food properly. She further denied on 8-6-2015 vide mark R-5 she refused to take the responsibility of cooking gas and weighing scale which was initially her prime duty. She also denied that on 4-7-2015 *vide* mark R-6 it was found that the food was not served by her hygienically to the students and the left out food was kept in open. She denied that on 20-7-2015 an office order mark R-7 was issued to her. She further denied that on 1-8-2015 *vide* mark R-8 she misbehaved with her superiors and threatened them to approach the workers union. She also denied that she had received the letter mark R-9. She denied that she had not attended the annual day function on 5-3-2016. She denied that the parents of the students had made a complaint against her. She further denied that notices dated 4-7-2015 mark R-11 and dated 5-3-2016 mark R-12 were issued to her. She admitted that her services were terminated on 10-6-2016 and she received the termination letter on 11-6-2016. She denied that she was given an opportunity of being heard prior to her termination. When cross-examined on behalf of respondent No.2 she admitted that she was engaged by SMC. She denied that on 9-6-2016 an enquiry was conducted by Block Elementary Education Officer and it was found that her work and behavior was not satisfactory. She admitted that she was a part time worker.

8. AW-2 Shri Manohar Singh Head Teacher at Government Primary School Kandaghat deposed that the petitioner had made a representation Ex. AW-2/A to the BEEO Kandaghat on 6-6-2016. When cross-examined on behalf of respondent No.1 he admitted that there is no original copy of the representation on the record.

9. AW-3 Smt. Dayalo Devi deposed that she remained the President of SMC Government Primary School Kandaghat from the year 2004 to 2007 and thereafter also she had been visiting the school as her grand children were studying there. She further deposed that the petitioner was working as helper in the school and her work was satisfactory and her services were illegally terminated. In cross examination on behalf of respondent No.1, she denied that the petitioner had asked her to depose in her favour. When cross examined on behalf of respondent No. 2 she denied that the behavior of the petitioner was not proper with the teachers, parents and students.

10. AW-4 Smt Geeta Devi deposed that her daughter is studying in 4th standard at Government Primary School Kandaghat-1 and she had been visiting the school frequently. She further deposed that the petitioner was working as a helper in the school and her work was satisfactory and no complaint against her was received. In cross examination on behalf of respondent No.1 she denied that various complaints were received against the petitioner about her working. When cross-examined on behalf of respondent No. 2 she denied that the behavior of the petitioner was not proper with the teachers, parents and students.

11. Smt. Sangeeta appeared into the witness box as AW-5 to depose that her sons are studying at Government Primary School Kandaghat-1 and the petitioner was working as helper in the school. She further deposed that her work was satisfactory and no complaint against her was received. She also deposed that the proceedings register was not read over and explained to her before taking her signatures on the same by Secretary/President of SMC Kandaghat. In cross examination on behalf of respondent No. 1 she denied that the work of the petitioner was not satisfactory. She admitted that mark R- 2, bears her signatures at point A encircled red. She denied that the services of the petitioner were terminated as her work was not satisfactory. She further denied that the proceedings were signed by her after understanding its contents. When cross examined on behalf respondent No. 2 she denied that the behavior of the petitioner was not proper with the teacher, parents and students.

12. On the other hand, the respondent No.1 examined four RWs. RW-1 Shri Ram Swaroop Thakur, Centre Head Teacher has tendered in evidence the copies of minutes of meetings dated 30-6-2014, 5-9-2014, 15-5-2015, 8-6-2015, 4-7-2015 Ex. RW-1/A to Ex. RW-1/E, copy of office order dated 16-3-2015 Ex. RW-1/F, copy of minutes of meeting dated 1-8-2015 Ex. RW-1/H and dated 5-3-2016 Ex. RW-1/J. In cross-examination on behalf of petitioner he admitted that the minutes of meetings have not been prepared by him and the notices mark R-11 and mark 12 are not the part of the record brought by him and as per the record no notice was issued to the petitioner prior to 1-4-2015 regarding non serving of complete meals to the students and regarding not maintaining cleanliness. He deposed that at present mid day meal helper namely Manorama is working in place of the petitioner.

13. RW-2 Shri Devinder Singh, President SMC deposed that the petitioner was engaged as helper by the SMC as per the notification mark R-1 of the Government of HP. He further stated that the petitioner was not serving meals properly to the students since the year, 2013 and Ex. RW-1/A to Ex. RW-1/D, Ex. RW-1/H and Ex. RW-1/J bear his signatures. He also stated that when he became the President, many complaints were received against the petitioner that she was misbehaving with the students, teachers and staff members and she was not maintaining proper cleanliness while serving the meals etc. He deposed that the petitioner did not use to participate in the SMC meetings despite calling her and she was warned several times and notices mark R-11, mark R-12 and mark R-13 bear his signatures and the petitioner was terminated on the basis of decision of SMC. In cross examination on behalf of respondent No. 2 he admitted that the petitioner was engaged by SMC. He further admitted that on 9-6-2016 Block Primary Officer and Member Block Co-ordination Committee conducted an enquiry into the complaints against the petitioner. He also admitted that the enquiry committee had heard the petitioner, parents and

members of SMC and the committee found the petitioner guilty of misbehaving with the students, parents and teachers. When cross-examined on behalf of petitioner he denied that a toilet and cooking shed have been constructed during his tenure as President SMC. He denied that he and Central head Teacher used to deploy the petitioner to carry the construction material from road side to school premises. He further denied that Manorama and Rita are related to him. He also denied that no enquiry was conducted against the petitioner on 9-6-2016. He denied that no notice was issued to the petitioner prior to her termination. He further denied that the petitioner was maintaining the cleanliness and serving meals to the students properly. He also denied that they had fabricated the proceedings and terminated the petitioner from back date. He denied that the members of SMC were made to sign the proceedings of termination of the petitioner by telling them that some proceedings of the back date were left to be signed by them.

14. Smt. Varsha Sharma appeared into the witness box as RW-3 to depose that her son is studying at Government Primary School Kandaghat from the year 2015 and the petitioner was not serving meals to the students properly, she was not maintaining cleanliness and the food was not hygienic. She further deposed that she was the member of SMC from the year, 2015 to 2017 and the behavior of the petitioner was not good towards the parents, members of SMC and teachers. She also deposed that the petitioner did not obey the directions of SMC and Ex. RW-1/A, Ex, RW 1/D, Ex. RW-1/H, Ex. RW-1/J, mark R-11 and mark R-12 bears her signatures. She deposed that two notices were issued to the petitioner prior to her termination and the petitioner was warned several times in the SMC meetings to improve her behavior but she failed to improve her behavior. In cross examination on behalf of respondent No. 2 she admitted that the behavior of the petitioner was not good towards teachers, parents and members of the SMC and her work was not proper. She admitted that on 9-6-2016 Block Primary Officer and Member Block Resources Co-ordination Committee conducted an enquiry into the complaints against the petitioner and the enquiry committee had heard the petitioner, parents and members of SMC and the committee found the petitioner guilty of misbehaving with the students, parents and teachers. When cross-examined on behalf of the petitioner she denied that the petitioner was made to carry the construction material from road side to school premises. She further denied that no enquiry was conducted against the petitioner prior to her termination. She also denied that the petitioner was wrongly terminated to adjust their own persons.

15. RW-4 Shri Hem Raj JBT of respondent No.1 has tendered in evidence the copy of notification dated 8-12-2011 alongwith guidelines Ex. RW-4/A and letter dated 14-9-2015 Ex. RW 4/B. In cross-examination on behalf of petitioner he admitted that the aforesaid record does not remain under his custody.

16. The respondent No. 2 examined one Shri Ram Gopal Bhardwaj as RW-5 who deposed that he was posted as Block Elementary Education Officer Kandaghat in the year, 2016 and a complaint was received against the petitioner and an enquiry was conducted by him against petitioner on 9-6-2016 and in the enquiry the petitioner was found guilty of disobeying the order of Central Head Teacher and SMC and thereafter he verbally told the petitioner to work properly. In cross-examination on behalf of petitioner he admitted that the complaint Ex. AW-2/A was received in their office. He further admitted that he had not issued any notice to the petitioner regarding the enquiry. He also admitted that during the relevant period the construction work of toilet and one room was going on in the school. He denied that the petitioner had made a complaint in their office that she was forced to carry the construction material. He further denied that the work of the petitioner was satisfactory.

17. I have closely scrutinized the entire record of the case and after the closure scrutiny thereof it has become clear that the petitioner was engaged as helper by the respondent No.1 Committee under the mid-day-meal scheme at Government Primary School Kandaghat-1 on

23-5-2008 and she worked as such till 11-6-2016. While appearing into the witness box as AW-1, the petitioner admitted in her cross-examination that she was engaged by the Committee as per guidelines issued by the State Government. The perusal of clause 14 of guidelines for engaging the cook-cum-helper under mid-day-meal scheme by the School Management Committee in H.P Ex. RW-1/A shows that the appointment of cook-cum-helper will be offered by the School Management Committee and the same will be made on contractual basis. The clause-14 of the aforesaid guidelines reads as under:

“The appointment to the selected person will be offered by the SMC. The appointment will be made on contractual basis for the SMC after executing a proper agreement between the candidate selected and President of SMC on the prescribed form of agreement. The contractual offer will be initially for one academic year. The contract will be renewed on yearly basis keeping in view the requirement of cook-cum-helper, medical fitness and performance of the person.”

Therefore, from the perusal of the entire evidence on record it has become clear that the petitioner had never been appointed by following the R&P Rules and she was only engaged on contractual basis by respondent No. 1 as per the guidelines issued by the State Government which fact has been admitted by the petitioner while appearing in the witness box as PW-1. The appointment of the petitioner was not on regular basis but was on the basis of the contract which was to be renewed on yearly basis keeping in view the requirement of cook-cum-helper, her medical fitness and her performance. After having accepted the said appointment the contract between the parties had become final. The petitioner did not hold a regular post nor did she have any right on the said post. It has been held by the Hon'ble Supreme Court in **2006 LLR 1233 SC in case titled as Vidya Vardhaka Sangha & Anr. Vs. Y.D Deshpande & Ors**, that the appointment made on probation/ad-hoc basis for a specific period of time comes to an end by efflux of time and the person on such post can have no right to continue on the post. The relevant portion of the aforesaid judgment is reproduced as under:

“The appointment made on probation/ad-hoc basis for a specific period of time comes to an end by efflux of time and the person on such post can have no right to continue on the post. When after having accepted the terms and conditions stipulated in the appointment letter and allowed, the period for which they were appointed has been elapsed by efflux of time, they cannot be permitted to challenge the validity of their termination.

In **(2006) 6 SCC 221, case titled as Reserve Bank of India Vs. Gopinath Sharma & Anr.** it has been held by the Hon'ble Supreme Court that workman not appointed to any regular post but engaged on the basis of need of work on day to day basis, had no right to the post.

It has also been held by the Hon'ble Supreme Court in **2006 (2) SCC 794 in case titled as Haryana State Agricultural Marketing Board Vs. Subhash Chand & Anr.** the Hon'ble Supreme Court that the Chapter-V-A of the Act would not be applicable in case the termination of the services of the workman is in view of the exception contained in clauses (bb) of section 2(oo) of the Act. The relevant portion of the aforesaid judgment is reproduced as under :

“11. The question as to whether Chapter V-A of the Act will apply or not would be dependent on the issue as to whether an order of retrenchment comes within the purview of Section 2 (oo) (bb) of the Act or not. If the termination of service in view of the exception contained in clauses (bb) of Section 2(oo) of the Act is not a 'retrenchment', the question of applicability of Chapter V-A thereof would not arise.

12. Central Bank of India Vs. S. Stayam whereupon reliance was placed by Mr. Singh, is itself an authority for the proposition that the definition of 'retrenchment' as

contained in the said provision is wide. Once it is held that having regard to the nature of termination of services it would not come within the purview of the said definition, the question of applicability of Section 25-G of the Act does not arise.”

18. In the instant case, admittedly, the petitioner was engaged purely on contract basis initially for a period of one year and thereafter the contract was renewed on yearly basis from time to time and she was not appointed to any regular post. Clause-20 of the Guidelines Ex. RW-4/A specifically provides that the candidates hired as cook-cum-helper under the guidelines by the respective SMC shall have no right to claim regularization/absorption/appointment as regular employee under the State Government. Thus, on the basis of the above cited rulings and also having regard to the entire evidence on record, it can safely be concluded that the petitioner had been engaged purely on contractual basis, who was not retrenched within the meaning of section 2(oo) of the Industrial Disputes Act, 1947. The case of the petitioner falls within the exception as provided under section 2(oo)(bb) of the Act as such the provisions of Chapter V-A of the Act would not be applicable.

19. There is another aspect of the case as the guidelines issued by the State Government specifically provides that if the performance of the selected person is not found satisfactory or good the SMC shall have the power to remove that person. At this stage, it would be relevant to reproduce clause 19(d) of the guidelines which reads as under:

“19(d). If the performance of the selected person is not found satisfactory/good, the SMC shall have power to remove the person”.

It has also become clear from the perusal of record that many complaints were received against the petitioner regarding her misbehavior with the students, teachers and staff members and regarding the fact that she was not maintaining proper cleanliness while serving the meals to the students. In this respect RW-1 had also tendered in evidence the copies of the minutes of meetings Ex. RW-1/A to Ex. RW-1/E, Ex. RW-1/H and Ex. RW-1/J. It has also become clear that notices Ex. RW-4/B, Mark R-11 and Mark R-12 have been issued to the petitioner prior to her termination and she was warned in the SMC meeting to improve her behavior. RW-5 specifically deposed that an enquiry was conducted against the petitioner by him on 9-6-2016 at Government Primary School Kandaghat-1 and she was found guilty of disobeying the orders of Central Head Teacher and President of Committee and thereafter he verbally told the petitioner to work properly. Ultimately, the services of the petitioner were terminated *vide* termination letter Ex. AW-1/A. In the opinion of this Court the respondent No.1 was well within its right to terminate the services of the petitioner in accordance with stipulation contained under the contract of service as laid down in clause-19(d) of the guidelines issued by the State Government as her performance was not found satisfactory by the respondent No.1 committee. It is therefore obvious that the violation of sections 25-F, 25-G and 25-H of the Act for their non compliance cannot be invoked by the petitioner who was appointed on contract basis and her contract of employment was terminated under a stipulation in that behalf contained in the guidelines.

20. Therefore, in view of my foregoing discussion and also in view of the guidelines issued by the State Government, it can safely be held that the petitioner had been engaged purely on contractual basis who was not retrenched within the meaning of section 2(oo) of the Act and her case falls within the exception contained under section 2(oo) (bb) of the Act as such it cannot be said that the termination of the services of the petitioner *w.e.f.* 11-6-2016 without complying with the provision of the Act is illegal and unjustified. Accordingly, this issue is decided in favour of the respondents and against the petitioner.

Issue No.2 :

21. Since, the petitioner has failed to prove issue No.1, above, this issue becomes redundant.

Issue No.3 :

22. In support of this issue, no evidence has been led by the respondents which could go to show as to why the petition is not maintainable. Therefore, in view of no evidence, it cannot be said that the petition is neither competent nor maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondents.

Relief :

As a sequel to my findings on the aforesaid issues, the claim of the petitioner fails and is hereby dismissed. Let a copy of this award/order be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 24th day of July, 2018.

Sd/-
 (SUSHIL KUKREJA)
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

App. No. 17 of 2017

Instituted on 19-1-2017

Decided on 24-7-2018

Sandhya Mehta r/o Village Jadari, P.O & Tehsil Kandaghat, District Solan, HP.

. . Petitioner.

Vs.

1. The President/Secretary, School Management Committee, Government Primary School Kandaghat-1, Tehsil Kandaghat, District Solan, H.P.

2. The Block Elementary Education Officer Educational Block, Kandaghat, Tehsil Kandaghat District Solan, HP. . . Respondents.

Petition under section 2-A (2) of the Industrial Disputes Act, 1947

For petitioner : Shri Niranjan Verma, Advocate.

For respondent No. 1 : Shri Gaurav Sharma, Advocate.

For respondent No. 2 : Shri Mahinder Singh, ADA.

ORDER

Facts in brief as narrated in the application are that the petitioner was initially appointed as cook under the scheme of Midday meal Worker on 2-9-2004 in Government Primary School Kandaghat and she worked continuously upto 10-6-2016 and thereafter she received a letter by post from the respondent No.1 in which her services were terminated *w.e.f.* 11-6-2016. It is further averred that the services of the petitioner were terminated without complying with the provisions of section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred as Act) as the respondent No.1 always tried to dispense with the services of the petitioner without any cause and the attitude of the respondent No.1 towards the petitioner was very vindictive and even the petitioner had tried to give her best performance during the duty hours but instead of getting any admiration from the respondents, her services were dispensed with by respondent No.1. That the petitioner worked to the entire satisfaction of the School Management Committee (hereinafter referred as to Committee) since her appointment but in the year, 2015, when new committee came into existence, they were adamant to terminate the services of the petitioner. It is also averred that the President and Secretary of the Committee order the petitioner and her co-worker orally to carry the construction material *i.e.* sand, grit, bricks *etc.* from road side to school because some construction was going on but the petitioner refused to do the labour work and for that reason the President and Secretary of the Committee got annoyed and bent upon to terminate the services of the petitioner and ultimately her services were terminated without issuing any notice and conducting of enquiry. That thereafter the petitioner filed a complaint to the respondent No. 2 on 6-6-2016 upon which the Committee organized a SMC meeting on back date *i.e.* 4-6-2016 in which they have decided to terminate the services of the petitioner. It is further averred that the petitioner had worked continuously during the aforesaid period and had completed 240 days in each calendar year and the respondents have engaged junior to the petitioner who are still working in the school and even no opportunity of being heard was given to the petitioner before terminating her services. Against this back-drop a prayer has been made that the respondents be directed to re-engage the petitioner with all consequential benefits and seniority.

2. By filing reply, the respondent No.1 contested the claim of the petitioner wherein preliminary objections have been taken *qua* maintainability, that the petitioner has not approached this Court with clean hands and estoppel. On merits, it has been asserted that the petitioner was engaged as cook-*cum*-helper under Mid Day Meal Scheme by the Committee as per the guidelines of Himachal Government. That the petitioner and her co-worker become hostile and arrogant in their behavior with the SMC and further used to obstruct in the smooth functioning of the Mid Day meal Scheme and never co-ordinated with the SMC given instructions and the petitioner was always found negligent and irresponsible in performing her duties and whenever being questioned by the SMC on account of irregularities, the petitioner used to indulge in misbehaving with the SMC and she never used to follow the instructions given by SMC regarding maintaining the quality of the food and providing food to small children at school in a hygienic manner. It is further asserted that the SMC meetings were presided over by the President, members and the parents of the students in order to discuss the efficient functioning of the SMC and the minutes of each meetings and decision/instruction H.P. Advocates Welfare Fund Trustee Com. taken was recorded in the SMC register which was duly signed by the President, members and parents of the students present at the time of the meetings and was kept as a record for future references and on several intervals the irregularities, adamancy and arrogance of the petitioner and her co-worker were brought on record in SMC meetings. That on 30-6-2014, SMC meeting was held and instructions were given to the petitioner and her co-worker to work as per rule and regulation and to provide mid-day meal to the students in a proper and arranged manner and on 5-9-2014, a SMC meeting was held whereby the petitioner was instructed to sign the stock register in future but the petitioner

stopped to sign the stock register despite several requests and on 16-3-2015, the SMC *vide* its office order strictly instructed the petitioner and her co-worker to serve food in hygienic manner and to wash the utensils on the same day but the petitioner and her coworker refused to sign the office order and on 15-5-2015, the petitioner and her co-worker were instructed not to have indifferent attitude towards students while serving meals to them and on 8-6-2015 in SMC meeting it was found that the petitioner and her co-worker refused to take responsibility of cooking gas and weighing scale which was primarily their duty and on 4-7-2015 SMC meeting was held whereby the petitioner and her co worker refused to follow the instruction/work assigned to them by the SMC and even the complaints regarding disposing of waste food material in open was received from the adjoining residents and *vide* office order 48/15 much irregularities were in the working of both mid day meal worker were found whereby students were engaged for performing their duties and further utensils were left unwashed and on 1-8-2015, a SMC meeting was held whereby petitioner and her co-worker misbehaved with the SMC and thereafter an enquiry was conducted by the Block Elementary Education Officer *vide* letter dated 14-9-2015 and the irregularities in the working of the petitioner and her co-worker was found by BEEO and a warning was issued to the petitioner and then on 5-3-2016 SMC meeting notice was served upon the petitioner alongwith her co-worker regarding their absence in annual distribution function. It is also asserted that decision regarding discharging the services of the petitioner alongwith her co-worker was taken in a combined SMC meeting which was also signed by the parents of the students and since the mid-day workers are appointed as part time workers by the SMC on contractual basis, hence, no question of completion of 240 days arise and even as per the guidelines of the government, the candidates hired as cook-*cum*-helper under the guidelines by the SMC shall have no right to claim regularization/absorption/appointment as regular employees under the State Government. It is denied that the respondent No.1 has engaged juniors to the petitioner who are still working in the school. It is asserted that new appointment was done in accordance with the rules and in fair manner and also a SMC meeting was conducted on 16-6-2016 whereby new cook and helper were appointed. It is denied that the petitioner was not given opportunity of being heard and no notice was served upon her. It is asserted that three notices dated 4-7-2015, 5-3-2016 and 4-6-2016 were issued and served upon the petitioner and her co-worker. The respondent No.1 prayed for the dismissal of the claim petition.

3. By filing separate reply, respondent No. 2 contested the claim of the petitioner wherein preliminary objection *qua* maintainability has been taken. On merits, it has been asserted that the petitioner was given full opportunity of being heard and enquiry was conducted by the respondent No.1 on 9-6-2016 and found that petitioner and her co-worker were not working properly and their behavior was not proper. It is further asserted that the petitioner was a part time worker. It is denied that the petitioner had completed 240 days in any calendar year. It is further denied that the respondent No. 2 has illegally terminated the services of the petitioner. The respondent No. 2 also prayed for the dismissal of the petition.

4. Rejoinder not filed. On the pleadings of the parties, the following issues were framed by this Court on 7-9-2017.

1. Whether the termination of the services of the petitioner *w.e.f.* 11-6-2016 without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified? . .OPP.
2. If issue No. 1 is proved in affirmative, to what relief of service benefits the petitioner is entitled ? . .OPP.
3. Whether the petition is neither competent nor maintainable as alleged? . .OPR.
4. Relief.

5. I have heard the learned counsel for the parties and also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No. 1 : No.

Issue No. 2 : Becomes redundant.

Issue No. 3: No.

Relief: Application dismissed per operative part of order.

Reasons for findings

Issues No.1 :

7. To prove issue No.1 the petitioner stepped into the witness box as AW-1 to depose that she was posted as worker/cook under the mid-day meal work scheme on 2-9-2004 in Government Primary School, Kandaghat-1 Solan and she worked continuously till 10-6-2016 and her services were terminated *w.e.f.* 11-6-2016 without issuing any notice and without conducting any enquiry and paying any retrenchment compensation to her. She further stated that she had completed 240 days in every calendar year/preceding year. She tendered in evidence her termination letter Ex. AW-1/A, copy of demand notice Ex. AW-1/B and copy of conciliation proceedings mark AX. She stated that the School Management Committee used to direct them to carry the construction material and she used to carry the same and since she was the mid day meal worker/cook, therefore, after some time she refused to carry the construction material and as such the respondent No.1 got annoyed and threatened her to terminate her services. She further stated that she had written a letter mark AY to BEEO Kandaghat and thereafter her services were terminated. She also stated that the parents of the students of the school had also written a letter dated 25-7-2016 to BEEO Mark AY-1 and Deputy Director Education, District Solan Mark AY-2 regarding the fact that their signatures were obtained fraudulently on the proceedings register and after her termination, the respondents had engaged fresh hand namely Rita as cook. In cross-examination on behalf of respondent No. 1 she admitted that her services were engaged as per the guidelines mark R-1, issued by the State Government. She further admitted that SMC Meeting is presided over by the President. She denied that her services were not satisfactory and she did not use to cook the food properly. She further denied that she used to disobey the orders of her superiors. She also denied that on 30-6-2014 a complaint was made against her in the SMC meeting that she was not cooking the food properly. She denied that on 5-9-2014 a complaint mark R-3 was made against her that she was not signing the stock register. She denied that on 16-3-2015 an order mark R-4 was issued to her that she was not cooking the food properly. She further denied on 8-6-2015 *vide* mark R-5 she refused to take the responsibility of cooking gas and weighing scale which was initially her prime duty. She also denied that on 4-7-2015 *vide* mark R-6 it was found that the food was not cooked by her hygienically to the students and the left out food was kept in open. She denied that on 20-7-2015 an office order mark R-7 was issued to her. She further denied that on 1.8.2015 *vide* mark R-8 she misbehaved with her superiors and threatened them to approach the workers union. She also denied that she had received the letter mark R-9. She denied that she had not attended the annual day function on 5-9-2016. She denied that the parents of the students had made a complaint against her. She further denied that notice dated 4-7-2015 mark R-11 and dated 5-3-2016 mark R-12 were issued to her. She admitted that her services were terminated on 10-6-2016 and she received the termination letter on 11-6-2016. She denied that she was given an opportunity of being heard prior

to her termination. When cross-examined on behalf of respondent No. 2 she admitted that she was engaged by SMC. She denied that on 9-6-2016 an enquiry was conducted by Block Elementary Education Officer and it was found that her work and behavior was not satisfactory. She admitted that she was a part time worker.

8. AW-2 Shri Manohar Singh Head Teacher at Government Primary School Kandaghat deposed that the petitioner had made a representation Ex. AW-2/A to the BEEO Kandaghat on 6-6-2016. When cross-examined on behalf of respondent No. 1 he admitted that there is no original copy of the representation on the record.

9. AW-3 Smt. Dayalo Devi deposed that she remained the President of SMC Government Primary School Kandaghat from the year 2004 to 2007 and thereafter also she had been visiting the school as her grand children were studying there. She further deposed that the petitioner was working as a cook in the school and her work was satisfactory and her services were illegally terminated. In cross examination on behalf of respondent No. 1, she denied that the petitioner had asked her to depose in her favour. When cross examined on behalf of respondent No. 2 she denied that the behavior of the petitioner was not proper with the teachers, parents and students.

10. AW-4 Smt Geeta Devi deposed that her daughter is studying in 4th standard at Government Primary School Kandaghat-1 and she had been visiting the school frequently. She further deposed that the petitioner was working as a cook in the school and her work was satisfactory and no complaint against her was received. In cross examination on behalf of respondent No. 1 she denied that various complaints were received against the petitioner about her working. When cross-examined on behalf of respondent No. 2 she denied that the behavior of the petitioner was not proper with the teachers, parents and students.

11. Smt. Sangeeta appeared into the witness box as AW-5 to depose that her sons are studying at Government Primary School Kandaghat-1 and the petitioner was working as cook in the school. She further deposed that her work was satisfactory and no complaint against her was received. She also deposed that the proceedings register was not read over and explained to her before taking her signatures on the same by Secretary/President of SMC Kandaghat. In cross examination on behalf of respondent No.1 she denied that the work of the petitioner was not satisfactory. She admitted that mark R-2, bears her signatures at point A encircled red. She denied that the services of the petitioner were termainted as her work was not satisfactory. She further denied that the proceedings were signed by her after understanding its contents. When cross examined on behalf respondent No. 2 she denied that the behavior of the petitioner was not proper with the teacher, parents and students.

12. On the other hand, the respondent no.1 examined four RWs. RW-1 Shri Ram Swaroop Thakur, Centre Head Teacher has tendered in evidence the copies of minutes of meetings dated 30-6-2014, 5-9-2014, 15-5-2015, 8-6-2015, 4-7-2015 Ex. RW-1/A to Ex. RW-1/E, copy of office order dated 16-3-2015 Ex. RW-1/F, copy of minutes of meeting dated 1-8-2015 Ex. RW-1/H and dated 5-3-2016 Ex. RW-1/J. In cross-examination on behalf of petitioner he admitted that the minutes of meetings have not been prepared by him and the notices mark R-11 and mark 12 are not the part of the record brought by him and as per the record no notice was issued to the petitioner prior to 1-4-2015 regarding non serving of complete meals to the students and regarding not maintaining cleanliness. He deposed that at present mid day meal cook namely Rita is working in place of the petitioner.

13. RW-2 Shri Devinder Singh, President SMC deposed that the petitioner was engaged as cook by the SMC as per the notification mark R-1 of the Government of HP. He further stated that the petitioner was not serving meals properly to the students since the year, 2013 and Ex. RW-1/A

to Ex. RW-1/D, Ex. RW-1/H and Ex. RW-1/J bear his signatures. He also stated that when he became the President, many complaints were received against the petitioner that she was misbehaving with the students, teachers and staff members and she was not maintaining proper cleanliness while serving the meals etc. He deposed that the petitioner did not use to participate in the SMC meetings despite calling her and she was warned several times and notices mark R-11, mark R-12 and mark R-13 bear his signatures and the petitioner was terminated on the basis of decision of SMC. In cross examination on behalf of respondent No. 2 he admitted that the petitioner was engaged by SMC. He further admitted that on 9-6-2016 Block Primary Officer and Member Block Co-ordination Committee conducted an enquiry into the complaints against the petitioner. He also admitted that the enquiry committee had heard the petitioner, parents and members of SMC and the committee found the petitioner guilty of misbehaving with the students, parents and teachers. When cross-examined on behalf of petitioner he denied that a toilet and cooking shed have been constructed during his tenure as President SMC. He denied that he and Central head Teacher used to deploy the petitioner to carry the construction material from road side to school premises. He further denied that Manorama and Rita are related to him. He also denied that no enquiry was conducted against the petitioner on 9-6-2016. He denied that no notice was issued to the petitioner prior to her termination. He further denied that the petitioner was maintaining the cleanliness and serving meals to the students properly. He also denied that they had fabricated the proceedings and terminated the petitioner from back date. He denied that the members of SMC were made to sign the proceedings of termination of the petitioner by telling them that some proceedings of the back date were left to be signed by them.

14. Smt. Varsha Sharma appeared into the witness box as RW-3 to depose that her son is studying at Government Primary School Kandaghat from the year 2015 and the petitioner was not serving meals to the students properly, she was not maintaining cleanliness and the food was not hygienic. She further deposed that she was the member of SMC from the year, 2015 to 2017 and the behavior of the petitioner was not good towards the parents, members of SMC and teachers. She also deposed that the petitioner did not obey the directions of SMC and Ex. RW-1/A, Ex. RW 1/D, Ex. RW-1/H, Ex. RW-1/J, mark R-11 and mark R-12 bears her signatures. She deposed that two notices were issued to the petitioner prior to her termination and the petitioner was warned several times in the SMC meetings to improve her behavior but she failed to improve her behavior. In cross-examination on behalf of respondent No. 2 she admitted that the behavior of the petitioner was not good towards teachers, parents and members of the SMC and her work was not proper. She admitted that on 9-6-2016 Block Primary Officer and Member Block Resources Co-ordination Committee conducted an enquiry into the complaints against the petitioner and the enquiry committee had heard the petitioner, parents and members of SMC and the committee found the petitioner guilty of misbehaving with the students, parents and teachers. When cross-examined on behalf of the petitioner she denied that the petitioner was made to carry the construction material from road side to school premises. She further denied that no enquiry was conducted against the petitioner prior to her termination. She also denied that the petitioner was wrongly terminated to adjust their own persons.

15. RW-4 Shri Hem Raj JBT of respondent No.1 has tendered in evidence the copy of notification dated 8-12-2011 alongwith guidelines Ex. RW-4/A and letter dated 14-9-2015 Ex. RW 4/B. In cross-examination on behalf of petitioner he admitted that the aforesaid record does not remain under his custody.

16. The respondent No. 2 examined one Shri Ram Gopal Bhardwaj as RW-5 who deposed that he was posted as Block Elementary Education Officer Kandaghat in the year, 2016 and a complaint was received against the petitioner and an enquiry was conducted by him against petitioner on 9-6-2016 and in the enquiry the petitioner was found guilty of disobeying the order of Central Head Teacher and SMC and thereafter he verbally told the petitioner to work properly. In

cross-examination on behalf of petitioner he admitted that the complaint Ex. AW-2/A was received in their office. He further admitted that he had not issued any notice to the petitioner regarding the enquiry. He also admitted that during the relevant period the construction work of toilet and one room was going on in the school. He denied that the petitioner had made a complaint in their office that she was forced to carry the construction material. He further denied that the work of the petitioner was satisfactory.

17. I have closely scrutinized the entire record of the case and after the closure scrutiny thereof it has become clear that the petitioner was engaged as cook-cum-helper by the respondent No.1 Committee under the mid-day-meal scheme at Government Primary School Kandaghat-1 on 2-9-2004 and she worked as such till 11-6-2016. While appearing into the witness box as AW-1, the petitioner admitted in her cross-examination that she was engaged by the Committee as per guidelines issued by the State Government. The perusal of clause-14 of guidelines for engaging the cook-cum-helper under mid-day-meal scheme by the School Management committee in H.P Ex. RW-1/A shows that the appointment of cook-cum-helper will be offered by the School Management Committee and the same will be made on contractual basis. The clause-14 of the aforesaid guidelines reads as under:

“The appointment to the selected person will be offered by the SMC. The appointment will be made on contractual basis for the SMC after executing a proper agreement between the candidate selected and President of SMC on the prescribed form of agreement. The contractual offer will be initially for one academic year. The contract will be renewed on yearly basis keeping in view the requirement of cook-cum-helper, medical fitness and performance of the person.”

Therefore, from the perusal of the entire evidence on record it has become clear that the petitioner had never been appointed by following the R&P Rules and she was only engaged on contractual basis by respondent No. 1 as per the guidelines issued by the State Government which fact has been admitted by the petitioner while appearing in the witness box as PW-1. The appointment of the petitioner was not on regular basis but was on the basis of the contract which was to be renewed on yearly basis keeping in view the requirement of cook-cum-helper, her medical fitness and her performance. After having accepted the said appointment the contract between the parties had become final. The petitioner did not hold a regular post nor did she have any right on the said post. It has been held by the Hon'ble Supreme Court in **2006 LLR 1233 SC in case titled as Vidya Vardhaka Sangha & Anr. v. Y. D Deshpande & Ors**, that the appointment made on probation/ad-hoc basis for a specific period of time comes to an end by efflux of time and the person on such post can have no right to continue on the post. The relevant portion of the aforesaid judgment is reproduced as under:

“The appointment made on probation/ad-hoc basis for a specific period of time comes to an end by efflux of time and the person on such post can have no right to continue on the post. When after having accepted the terms and conditions stipulated in the appointment letter and allowed, the period for which they were appointed has been elapsed by efflux of time, they cannot be permitted to challenge the validity of their termination.

In **(2006) 6 SCC 221, case titled as Reserve Bank of India Vs. Gopinath Sharma & Anr.** it has been held by the Hon'ble Supreme Court that workman not appointed to any regular post but engaged on the basis of need of work on day to day basis, had no right to the post.

It has also been held by the Hon'ble Supreme Court in **2006 (2) SCC 794 in case titled as Haryana State Agricultural Marketing Board Vs. Subhash Chand & Anr. the Hon'ble**

Supreme Court that the Chapter-V-A of the Act would not be applicable in case the termination of the services of the workman is in view of the exception contained in clauses (bb) of section 2(oo) of the Act. The relevant portion of the aforesaid judgment is reproduced as under:

"11. The question as to whether Chapter V-A of the Act will apply or not would be dependent on the issue as to whether an order of retrenchment comes within the purview of Section 2 (oo) (bb) of the Act or not. If the termination of service in view of the exception contained in clauses (bb) of Section 2(oo) of the Act is not a 'retrenchment', the question of applicability of Chapter V-A thereof would not arise.

12. Central Bank of India Vs. S. Stayam whereupon reliance was placed by Mr. Singh, is itself an authority for the proposition that the definition of 'retrenchment' as contained in the said provision is wide. Once it is held that having regard to the nature of termination of services it would not come within the purview of the said definition, the question of applicability of Section 25-G of the Act does not arise."

18. In the instant case, admittedly, the petitioner was engaged purely on contract basis initially for a period of one year and thereafter the contract was renewed on yearly basis from time to time and she was not appointed to any regular post. Clause-20 of the Guidelines Ex. RW-4/A specifically provides that the candidates hired as cook-cum-helper under the guidelines by the respective SMC shall have no right to claim regularization/absorption/appointment as regular employee under the State Government. Thus, on the basis of the above cited rulings and also having regard to the entire evidence on record, it can safely be concluded that the petitioner had been engaged purely on contractual basis, who was not retrenched within the meaning of section 2(oo) of the Industrial Disputes Act, 1947. The case of the petitioner falls within the exception as provided under section 2(oo) (bb) of the Act as such the provisions of Chapter V-A of the Act would not be applicable.

19. There is another aspect of the case as the guidelines issued by the State Government specifically provides that if the performance of the selected person is not found satisfactory or good the SMC shall have the power to remove that person. At this stage, it would be relevant to reproduce clause 19(d) of the guidelines which reads as under:

"19(d). If the performance of the selected person is not found satisfactory/good, the SMC shall have power to remove the person".

It has also become clear from the perusal of record that many complaints were received against the petitioner regarding her misbehavior with the students, teachers and staff members and regarding the fact that she was not maintaining proper cleanliness while serving the meals to the students. In this respect RW-1 had also tendered in evidence the copies of the minutes of meetings Ex. RW-1/A to Ex. RW-1/H, Ex. RW-1/H and Ex. RW-1/J. It has also become clear that notices Ex. RW-4/B, Mark R-11 and Mark R-12 have been issued to the petitioner prior to her termination and she was warned in the SMC meeting to improve her behavior. RW-5 specifically deposed that an enquiry was conducted against the petitioner by him on 9-6-2016 at Government Primary School Kandaghat-1 and she was found guilty of disobeying the orders of Central Head Teacher and President of Committee and thereafter he verbally told the petitioner to work properly. Ultimately, the services of the petitioner were terminated *vide* termination letter Ex. AW-1/A. In the opinion of this Court the respondent No.1 was well within its right to terminate the services of the petitioner in accordance with stipulation contained under the contract of service as laid down in clause-19(d) of the guidelines issued by the State Government as her performance was not found satisfactory by the respondent No.1 committee. It is therefore obvious that the violation of sections 25-F, 25-G and 25-H of the Act for their non compliance cannot be invoked by the petitioner who was appointed on

contract basis and her contract of employment was terminated under a stipulation in that behalf contained in the guidelines.

20. Therefore, in view of my foregoing discussion and also in view of the guidelines issued by the State Government, it can safely be held that the petitioner had been engaged purely on contractual basis who was not retrenched within the meaning of section 2(oo) of the Act and her case falls within the exception contained under section 2(oo) (bb) of the Act as such it cannot be said that the termination of the services of the petitioner *w.e.f.* 11-6-2016 without complying with the provision of the Act is illegal and unjustified. Accordingly, this issue is decided in favour of the respondents and against the petitioner.

Issue No.2 :

21. Since, the petitioner has failed to prove issue No. 1, above, this issue becomes redundant.

Issue No. 3 :

22. In support of this issue, no evidence has been led by the respondents which could go to show as to why the petition is not maintainable. Therefore, in view of no evidence, it cannot be said that the petition is neither competent nor maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondents.

Relief:

As a sequel to my findings on the aforesaid issues, the claim of the petitioner fails and is hereby dismissed. Let a copy of this award/order be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 24th Day of July, 2018.

Sd/-
 (SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Ref. No. 36 of 2015

Instituted on 5-8-2015

Decided on 2-7-2018

Sohan Singh s/o Shri Chandan Singh House No. 15-B R. K. Puran Colony, Ambala City Haryana through J.C Bhardwaj, President, HP AITUC HQ Saproon Solan, H.P. .Petitioner.

Vs.

M/s Indo Farm Equipment Ltd., EPIP Phase-II, Village Thana, P.O Baddi, District Solan, HP through its Factory Manager/Occupier . Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri J.C Bhardwaj, AR.

For respondent : Shri H.R Thakur, Advocate.

AWARD

The reference for adjudication, sent by the appropriate government, is as under:

“Whether termination of the services of Shri Sohan Singh s/o Shri Chandan Singh House No. 15-B R. K. Puran Colony, Ambala City Haryana w.e.f. 26-2-2014 by the Employer/Management of M/s Indo Farm Equipment Ltd. EPIP, Phase-II, Village Thana Baddi, Distt. Solan, H.P. without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by workman, is legal and justified? If not, to what relief of reinstatement & compensation the above aggrieved workman is entitled to from the above management?”

2. Briefly, the case of the petitioner is that on 23-3-2010 he was appointed in the employment of respondent company as Mechanic and at the time of removal from the employment *vide* letter dated 26-2-2014, he was drawing salary of ₹ 9815/- per month alongwith other benefits and he remained continued as such till his illegal termination from service on 26-2-2014 and that too during the pendency of reference and further without saving express permission under section 33(1) of the Industrial Dispute Act, 1947 (hereinafter refer to as Act). It is further stated that the order of termination was the pre thought action plan of the respondent as he was an active “Trade Unionist” and was also General Secretary of the workers union and even the respondent management is guilty for non implementation of its own settlement dated 15-2-2014 *vide* which the petitioner had been absolved from all the previous disciplinary proceedings and he was posted at Ambala where he reported for duty on 19-2-2014 to Mr. Rajesh Saini, Manager Marketing and the petitioner was further deputed at Naraingarh where the petitioner reached on the same day and remained there till 22-2-2014 but his attendance was not marked and when the petitioner asked to provide him an attendance card or register to mark his attendance the respondent had told him that his joining report was not acceptable to the management at head Office and as such the petitioner confirmed his joining through Fax dated 24-2-2014 but it was surprising to him that his services were terminated without any reason and further without holding any enquiry. It is also stated that on account of the annual election of workers union, the petitioner was again elected as General Secretary on 23-2-2014 and the union supplied five names of newly elected office bearers including the petitioner to declare them protected workman but after receiving the election proceedings of the union on 25-2-2014, the respondent immediately terminated the services of the petitioner on 26-2-2014 on the basis of withdrawn enquiry. That the respondent management did each and every thing to malign the work and conduct of the petitioner due to his trade union activities. That management terminated the services of the petitioner on the basis of quashed as withdrawn chargesheet of dated 24-9-2013 which was replied by the petitioner in detail but the management was adamant to get the petitioner removed from service on one or the other pretext. It is stated that no second show cause notice proposing the punishment was served upon the petitioner. That the work and conduct of the petitioner was excellent and his services were terminated by adopting hire and fire formula. Against this back drop, a prayer has been made that the domestic enquiry conducted by the management be declared null and void and the termination order be set aside while directing the respondent management to reinstate the petitioner in service with full back wages, seniority and other consequential benefits.

3. By filing reply, the respondent contested the claim of the petitioner wherein preliminary objections have been taken *qua* maintainability and concealment of material information. On merits, it has been asserted that the petitioner was issued a chargesheet dated 17-12-2011 for the misconduct committed by him and a fair, proper and legal enquiry was conducted whereby the charges were proved against the petitioner but keeping in view the harmonious industrial relation, the petitioner was exonerated from the charges by giving a warning that he would not repeat such acts in future failing which a strict disciplinary action will be taken against him and he was transferred to Ambala *vide* letter dated 22-10-2013 and in pursuant to transfer orders, the petitioner joined at Ambala on 28-10-2013 and continued to work there upto 15-11-2013 and thereafter he started absenting from his duties *w.e.f.* 16-11-2013 without any proper intimation or permission or sanctioned leave, hence, a chargesheet dated 10-12-2013 was issued to him but the petitioner failed to attend the enquiry proceedings inspite of publication of notice in the newspaper by the enquiry officer and *ex-parte* proceedings were conducted after providing fair opportunity and adhering to the principles of natural justice. It is further asserted that the petitioner participated in illegal strike during his absence from duty from 8-12-2013 to 15-2-2013 and in the meantime a settlement dated 15-2-2014, under section 18(1) of the Act was arrived at between the workers union and management and the petitioner was one of the signatory of the settlement and as per clause 1 of the settlement the petitioner was again provided an opportunity to join his place of posting positively by 17-2-2014 failing which his services would be deemed to be terminated but the petitioner failed to join his duties by 17-2-2014 and his services were terminated strictly as per agreed clause 1 of settlement dated 15-2-2014. It is also asserted that the petitioner has never been any office bearer of the union as no election proceedings were ever received by the management. The respondent prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner reiterated his allegations as made in the claim petition by denying those of the respondent.

5. On the pleadings of the parties, the following issues were framed on 4-1-2017.

1. Whether the termination of the services of the petitioner by the respondent *w.e.f.* 26-2-2014 without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged? . *OPP.*
2. If issue No.1 is proved in affirmative, to what relief and service benefits the petitioner is entitled? . *OPP.*
3. Whether the petition is not maintainable as alleged? . *OPR.*
4. Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under :

Issue No. 1 : Yes.

Issue No. 2 : Entitled to reinstatement in service with seniority and continuity but without backwages.

Issue No. 3 : No.

Relief: Reference answered in favour of the Petitioner and against the respondent per operative part of award.

Reasons for findings

Issues No. 1 :

8. To prove issue No.1, the petitioner stepped into the witness box as PW-1 to depose that he was engaged as mechanic by the respondent company on 23-3-2010 *vide* appointment letter Ex. PW-1/A and he remained as such till 26-2-2014 and he was terminated during the pendency of reference No. 24/2014 Ex. PW-1/B raised by the union with respect to the demands of the workers and he was the General Secretary of the workers union. He further deposed that he alongwith other workers were transferred on 22-10-2013 from Baddi to Ambala but he was not allowed to join at Ambala and thereafter on 8-12-2013, the workers went on strike against the unfair labour practice of the management and on 15-2-2014 a settlement Ex. PW-1/C was executed between the management and the workers union and as per the settlement he was directed to join at Ambala but he was not allowed to join at Ambala. He also deposed that on 24-2-2014 he had sent a letter to the respondent through FAX under receipt Ex. PW-1/D and thereafter he submitted representation mark X to the respondent and he was terminated on 26-2-2014 *vide* letter Ex. PW-1/E. He stated that no enquiry was conducted prior to his termination and the workers union *vide* letter Ex. PW 1/F had informed the Labour Commissioner-cum-Registrar Union regarding the election. He further deposed that neither any notice nor any compensation was given to him before terminating his services. He had completed more than 240 days in every calendar year and he was illegally terminated from service. In cross-examination, he admitted that on 17-12-2011 he was chargesheeted and an enquiry was conducted against him. He denied that the charges against him stood proved and he was issued a warning. He denied that on his transfer he had joined at Ambala on 28-10-2013 and he remained there up to 15-11-2013. He further denied that he had not participated in the enquiry despite due intimation and publication in the newspaper. He admitted that he participated in the strike *w.e.f.* 8-12-2013 to 15-2-2014. He denied that his services were terminated as per clause 1 of the settlement dated 15-2-2014 as well as on the basis of enquiry report.

9. On the other hand, the respondent has examined two RWs. RW-1 Shri Chattar Singh, Manager HR deposed that *vide* authority letter Ex. RW-1/A he has been authorized to depose in the present case. He further deposed that the petitioner was working as a mechanic with the respondent *w.e.f.* 23-3-2010 till 26-2-2014 and on 17-12-2011 a chargesheet was issued against him and in this respect a domestic enquiry was held against him in which he was found guilty of misconduct but no action was taken against him as he tendered an apology and on 22-10-2013, he was transferred with increase of ₹ 2000/- as salary from Baddi to Naraingarh *vide* letter Ex. RW-1/B where he joined on 28-10-2013 and worked there till 14-11-2013 and thereafter he remained absent without any intimation. He also stated that on 29-11-2013 a letter Ex. RW-1/C was issued to him through registered post for his unauthorized absence but no intimation was received from the petitioner, therefore a chargesheet was issued against him on 10-12-2013 *vide* letter Ex. RW-1/D which was supplied to the petitioner through registered post under postal receipt Ex. RW-1/E and when no response was received from the petitioner a domestic enquiry was ordered to be initiated against him *vide* letter Ex. RW-1/F which was sent to him through registered post under postal receipt Ex. RW-1/G and the petitioner did not participate in the enquiry despite intimation through publication and he was proceeded against *ex parte*. He deposed that the enquiry officer had submitted his report Ex. RW-1/H on 25-2-2014 in which the petitioner was found guilty and on 15-2-2014 a settlement Ex. PW-1/C was arrived at between the management and the workers union and the termination of the petitioner was revoked as per clause 1 of the settlement and the petitioner was directed to join on or before 17-2-2014 but he did not join, hence, his services were terminated *vide*

letter Ex. PW-1/F and his full and final dues were paid by remitting the same in his bank account. In cross-examination, he denied that since the petitioner was the General Secretary of the workers union, therefore, he was chargesheeted in the year, 2011. He admitted that there is no written apology on behalf of the petitioner on record. He denied that after the settlement Ex. PW 1/C, the petitioner went to join at Naraingarh but he was not allowed to join. He further denied that letter Ex. RW-1/E and Ex. RW-1/F were sent to the petitioner on his wrong address and therefore he could not receive the same. He admitted that second show cause notice and enquiry report Ex. RW-1/H were not sent to the petitioner prior to his termination. He further admitted that no enquiry was held against the petitioner after the settlement. He also admitted that neither any permission nor any approval was obtained from the Court for terminating the services of the petitioner.

10. Shri A.C Arya, enquiry officer appeared in the witness box as RW-2 to depose that *vide* letter dated 30-12-2013 Ex. RW-2/A, he was appointed as enquiry officer to conduct the enquiry against the petitioner and he started the proceedings by writing a registered letter Ex. RW 1/B to the petitioner on 3-1-2014 and the date was fixed for 11-1-2014 but the petitioner failed to attend the proceedings and thereafter another letter dated 14-1-2014 Ex. RW-2/C was sent to the petitioner through registered post for appearing in the enquiry on 24-1-2014 but the petitioner failed to appear and thereafter in the interest of justice the notice was ordered to be published in the newspaper "Punjab Kesri" on 11-2-2014 by fixing the date of the proceedings as 22-2-2014 but despite publication of notice the petitioner failed to appear in the enquiry, hence, he was proceeded against *ex parte* and on the same day, he recorded the evidence of the management and closed the enquiry proceedings. He tendered in evidence the proceedings dated 22-2-2014 Ex. RW-2/E, the copies of the documents of the enquiry proceedings Mark A to Mark E. He further deposed that he submitted the enquiry report Ex. RW-2/F on 25-2-2014 in which the charges against the petitioner stood proved. In cross examination, he denied that the petitioner was asked to appear at Chandigarh. He admitted that the enquiry was not conducted at Baddi. He denied that the petitioner went to Naraingarh for attending the enquiry but he was not there. He stated that the enquiry proceedings were conducted at Naraingarh. He admitted that in the letter Ex. RW- 2/C, the petitioner was asked to appear at Baddi. He admitted that the notice through publication Ex. RW 2/D which is published in "Punjab Kesri" is not circulated in Himachal Pradesh. He denied that the documents Mark A to Mark E are fabricated as such the originals of the same are not produced. He admitted that in the enquiry proceedings photocopies of the documents Mark A to Mark E were allowed to be exhibited. He denied that the enquiry report Ex. RW-2/F is not based upon true facts and evidence.

11. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner was engaged as mechanic on 23-3-2010. It is not in dispute that the last drawn salary of the petitioner was ₹ 9815/- per month. It is also not in dispute that the petitioner was transferred from Baddi to Naraingarh, District Ambala *vide* letter dated 22-10-2013 Ex. RW-1/B and in pursuance of the transfer order he joined at Ambala on 27-10-2013. Thereafter, a chargesheet was issued to the petitioner *vide* letter Ex. RW-1/D on the ground that *w.e.f.* 15-11-2013 the petitioner started absenting from duty without prior permission, intimation or sanctioned leave and a domestic enquiry was ordered to be conducted against him *vide* letter dated 30-12-2013 Ex. RW-1/F. The petitioner was proceeded against *ex parte* in the enquiry proceedings and an *ex parte* enquiry was conducted against him by the enquiry officer Shri A.C Arya who submitted his report dated 25-2-2014 Ex. RW-1/H in which the charges leveled *vide* chargesheet dated 10-12-2013 Ex. RW-1/D stood proved against him. From the perusal of the record it has also become clear that on 15-2-2014 a settlement Ex. PW-1/C was arrived at between the respondent management and the workers union wherein as per clause-1 of the settlement the petitioner was to join on 17-2-2014 and since the petitioner did not join his duties as per the terms of settlement Ex. PW-1/C, his services were terminated *vide* letter dated 26-2-2014 Ex. PW- 1/F on the basis of the enquiry report and in view of clause-1 of settlement dated 15-2-2014 Ex. PW-1/C.

12. The AR for the petitioner contended that the enquiry against the petitioner was not conducted in a fair and proper manner by following the principles of natural justice as he was not properly served in the enquiry proceedings. However, from the perusal of the entire evidence on record, it cannot be said that the petitioner was not properly served in the enquiry proceedings. The record reveals that after issuance of the chargesheet dated 10-12-2013 Ex. RW-1/D, an enquiry was ordered to be conducted against the petitioner *vide* letter dated 30-12-2013 Ex. RW-1/F. RW-2, the enquiry officer deposed that he started the proceedings of the enquiry by writing a letter dated 3-1-2014 Ex. RW-2/B to the petitioner and the date was fixed for 11-1-2014 but the petitioner failed to attend the proceedings. The perusal of letter Ex. RW-2/B shows that the petitioner was advised by the enquiry officer to appear at M/s Indofarm Equipment Ltd., Ambala Nahan Road, Naraingarh District Ambala (Haryana). RW-2 further deposed that thereafter another letter dated 14-1-2014 Ex. RW-2/C was issued to the petitioner through registered post for appearing in the enquiry on 24-1-2014 at Baddi but the petitioner again failed to appear on 24-1-2014 and thereafter the enquiry officer had ordered the notice to be published in the newspaper "Punjab Kesri" on 11-2-2014 by fixing the date of proceedings as 22-2-2014, the copy of which is Ex. RW-2/D. However, despite publication of the notice, the petitioner failed to appear in the enquiry as such he was proceeded against as *ex parte*. No cogent and satisfactory evidence has been led by the petitioner that he was not properly served during the enquiry proceedings. RW-2 categorically deposed that when the petitioner failed to appear in the enquiry proceedings despite publication of the notice, he was proceeded against *ex parte* on 22-2-2014 and on the same date he recorded the statements of witnesses and closed the enquiry proceedings. He also tendered in evidence the enquiry proceedings dated 22-2-2014 Ex. RW-2/E and enquiry report Ex. RW-2/F. RW-2 was cross-examined at length however nothing favourable could be elicited from his lengthy cross examination which could lead this Court to draw an inference that the petitioner was wrongly proceeded against as *ex parte*. Therefore, in the absence of any cogent and satisfactory evidence on record, it cannot be said that the petitioner was not properly served and was wrongly proceeded against as *ex parte*. The aforesaid facts would clearly show that the petitioner was well aware about the enquiry proceedings which were being conducted against him but he had failed to participate in the enquiry proceedings despite the fact that he was aware about the same. Now, the question which arises for consideration before this Court is as to whether the petitioner can allege violation of principles of natural justice despite being aware about the enquiry proceedings. The Hon'ble Supreme Court in a catena of judgments held that the employee failing to participate in the enquiry proceedings being aware of the enquiry, cannot complain violation of the principles of natural justice. In AIR 2008 SC (Supl.) 1542, *Board of Directors H.P.T.C Vs. K.C Rahi*, it has been held that if an employee does not participate in the enquiry proceedings being well aware of departmental enquiry, he is estopped from raising the question of non-compliance of the principles of natural justice. The relevant portion of the aforesaid judgment is reproduced as under:

".....The Tribunal also held that from the representation dated 09-08-1993 and 19-10-1993 it would clearly show that the respondent was well aware of the departmental enquiry which was initiated against him, however, he intentionally avoided service of notice and did not participate in the enquiry proceedings and, therefore, he was estopped from raising the question of noncompliance of the principle of natural justice.....".

Furthermore, in **(2008)-4 SCC 42, Pepsu Road Transport Corporation Vs. Rawel Singh**, it has been held as under:

"15..... We are not entering into correctness or otherwise of the allegations of the Corporation. One thing, however, is certain that in spite of service of show cause notice, the respondent failed to appear at the enquiry and the Enquiry Officer had to proceed with the enquiry in absence of the respondent.

16. Apart from that it is also clear from the record that so far as the charge as to unauthorized absence of the respondent is concerned, the same is duly established from the

record. The Enquiry Officer, in our opinion, rightly observed that charges (ii) and (iii) were consequential in nature and based on charge (i) and hence all the charges can be said to have been proved against the respondent. In our judgment, the Labour Court was wholly wrong in holding that enquiry was not fair. To us, it is not a case of not extending an opportunity to the employee but not availing of opportunity by the employee. Therefore, the finding recorded by the Labour Court that the enquiry was vitiated being violative of natural justice and fair play is based on 'no evidence' and must be set aside".

Similarly, in (1997) 10 S.C.C 386, Ranjan Kumar Mitra Vs. Andrew Yule & Co. Ltd., and others it has been observed as under:

"1. In view of the fact that the appellant's services were terminated after an enquiry in which the appellant chose not to participate, we are of the view that the appellant cannot assail his termination on merits even assuming that the writ petition filed by him in the High Court was maintainable. For this reason, it is not necessary to examine the correctness of the High Court's view that the writ petition was not maintainable. The dismissal of the appeal by this Court is, therefore, not to be construed as an expression of any opinion on the merits of the view taken by the High Court on the question of maintainability of the writ petition."

13. Therefore, in view of the aforesaid decisions of Hon'ble Supreme Court, the petitioner is estopped from raising the plea of noncompliance of principles of natural justice as he had failed to participate in the enquiry despite being aware about the enquiry proceedings.

14. The charges leveled against the petitioner *vide* Chargesheet dated 10-12-2013 Ex. RW-1/D shows that the petitioner started absenting himself from duty without prior permission, intimation or sanctioned leave *w.e.f.* 15.11.2015. The enquiry officer found him guilty of the misconduct alleged in the aforesaid chargesheet *vide* enquiry report Ex. RW-1/H. The perusal of the record further shows that a settlement Ex. PW-1/C under section 18(1) of the Act was arrived at between the workers union and the management on 15-2-2014 and as per clause-1 of the same the petitioner was again provided an opportunity to join at Ambala positively by 17-2-2014 failing which his services would be deemed to be terminated. However, the petitioner as PW-1 has stated that as per settlement he went to join at Ambala but he was directed by Mr. Rajesh Saini of the respondent company to join at Naraingarh, however, he was not allowed to join even at Naraingarh and thereafter he was terminated on 26-2-2014 *vide* letter Ex. PW-1/E. On the other hand the case of the respondent is that the petitioner was to join his duties by 17-2-2014 which was last date for joining at Ambala but he failed to abide by the terms and conditions of settlement dated 15-2-2014 and therefore his services were terminated *vide* letter dated 26-2-2014 Ex. PW-1/F in view of clause-1 of the settlement Ex. PW-1/C wherein it has been mentioned that if the workmen who were re-transferred failed to join their duties at transferred place, their services would stand terminated. However, the petitioner failed to prove on record that he was not allowed to join his duty at Naraingarh/Ambala. Though, the petitioner deposed that as he was not allowed to join at Naraingarh, therefore, on 24-2-2014, he had sent a letter to the respondent through Fax, the receipt of which is Ex. PW-1/D. However, the letter sent through Fax has not been placed on record by the petitioner. The petitioner further deposed that thereafter he submitted representation dated 24-2-2014 Mark X, however the same is only a photocopy and has not been proved in accordance with law. Therefore, no credence can be attached to the receipt Ex. PW-1/D and representation Mark X. No other evidence has been led by the petitioner to prove that he was not allowed to join his duty at Naraingarh/Ambala by the respondent. Therefore, in the absence of any cogent and satisfactory evidence on record, it cannot be said that the petitioner was not allowed to join at Naraingarh/Ambala by the respondent.

15. The services of the petitioner were terminated *vide* letter dated 26-2-2014 Ex. PW-1/F on the basis of the enquiry report and also on the ground that he did not comply with the terms and conditions of settlement Ex. PW-1/C. Now, the next question which arises for consideration before this Court is as to whether the punishment of termination from service imposed upon the petitioner is disproportionate to the gravity of the misconduct and whether this Court can interfere in the punishment imposed by the respondent. In (2005) 3 S.C.C 134, **Mahindra and Mahindra Ltd. Vs. N.B Narawade**, it has been held by the Hon'ble Supreme Court that after introduction of section 11-A in the Industrial Disputes Act certain amount of discretion is vested with the Labour Court/Tribunal in interfering with the quantum of punishment whereby the concerned workman is found guilty of the misconduct. The relevant portion of the aforesaid judgment is reproduced as under:

“20. It is no doubt true that after introduction of Section 11-A in the Industrial Disputes Act, certain amount of discretion is vested with the Labour court/Industrial Tribunal in interfering with the quantum of punishment awarded by the Management where the workman concerned is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of this Court referred to hereinabove and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised under Section 11-A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which requires the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment. In the absence of any such factor existing, the Labour Court cannot by way of sympathy alone exercise the power under Section 11-A of the Act and reduce the punishment.” (emphasis supplied).

In the present case as observed earlier the charges leveled against the petitioner *vide* chargesheet dated 10-12-2013 Ex. RW-1/D shows that the petitioner started absenting himself from duty without prior permission, intimation or sanctioned leave *w.e.f.* 15-11-2015 and after conducting the enquiry the charges leveled against him stood proved *vide* enquiry report Ex. RW 1/H. However, in the mean time a settlement under section 18(1) of the Act was arrived at between the workers union and management and as per clause-1 of the aforesaid settlement the petitioner was again provided an opportunity to join at Ambala positively by 17-2-2014 failing which his services would be deemed to be terminated but the petitioner failed to join his duties as such his services were terminated *vide* letter dated 26-2-2014. In the opinion of this Court the punishment of termination from service imposed upon the petitioner is grossly disproportionate to the gravity of misconduct committed by him. Admittedly, the petitioner had been engaged as mechanic and not in a sensitive post and this is not the case of dishonesty, misappropriation or using abusive language against the superior officers which require an extreme penalty of termination of services. Moreover, the respondent in para 12 of its reply had categorically averred that if the petitioner is interested, the management is ready to take him on duty without back-wages.

16. Therefore, looking into the charges leveled against the petitioner and also keeping in view the fact that the respondent is still ready to take back the petitioner on duty, the punishment of termination of the services of the petitioner *w.e.f.* 26-2-2014 is hereby set aside and quashed.

17. Thus, having regard to entire evidence on record and in view of my foregoing observations, I have no hesitation in holding that the termination of the services of the petitioner *w.e.f.* 26-2-2014 by the respondent is illegal and unjustified. Accordingly, issue No.1 is decided in favour of the petitioner and against the respondent.

Issue No. 2 :

18. Since I have held under issue No.1 above that the termination of services of the petitioner by the respondent is illegal and unjustified, therefore, the petitioner is held entitled to reinstatement in service with seniority and continuity.

19. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the AR for the petitioner. In **(2009) 1 SCC 20, Kanpur Electricity Supply Company Limited Vs. Shamim Mirza**, the Hon'ble Supreme Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla** that full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

20. Moreover, the petitioner was under an obligation to prove by leading cogent evidence that he was not gainfully employed after the termination of his services. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the **Hon'ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another Vs. S.C Sharma** that :

“16.....When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim.....”

21. In the present case there is no cogent and satisfactory evidence on record to suggest that the petitioner was not gainfully employed after his termination. The petitioner has failed to discharge his burden by placing any concrete material on record that he was not gainfully employed after his termination/disengagement. Therefore, in view of the entire evidence, on record, coupled with the rulings (supra), I have no hesitation in holding that the petitioner is not entitled to any back-wages. Accordingly, issue No. 2 is partly decided in favour of the petitioner and against the respondent.

Issue No.3 :

22. In support of this issue, no evidence has been led by the respondent. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Relief :

As a sequel to my above discussion and findings on issues No.1 to 3, the claim of the petitioner succeeds and is hereby partly allowed and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity. However the petitioner is not entitled to back wages as such the reference is ordered to be answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 2nd Day of July, 2018.

Sd/-
 (SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Ref No. 40 of 2017

Instituted on 2-3-2017

Decided on 23-7-2018

Indermani w/o Shri Mohan r/o Village Shango, P.O Katgaon, Tehsil Nichar, District Kinnaur, HP. . Petitioner.

Vs.

Executive Engineer, Bhabha Construciton Circle, HPSEB Limited Bhabhanagar, District Kinnaur HP. . Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Smt. Veena sood, Advocate.

For respondent : Shri Ramakant Sharma, Advocate.

AWARD

The reference for adjudication, sent by the appropriate government, is as under:

“Whether alleged termination of services of Smt. Indramani w/o Shri Mohan, Village-Shango, P.O. Katgaon, Tehsil Nichar, Distt. Kinnaur, H.P., during April, 1996, by the Executive Engineer, Bhabha Construction Circle, HPSEB Ltd. Bhawa Nagar, Distt. Kinnaur, H.P., who had worked as beldar on daily wages from 1979 to 1988 and 9/1995 to 4/1996 and has raised her industrial dispute after about 19 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period and delay of about 19 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex worker is entitled to from the above employer?”

2. Briefly, the case of the petitioner is that she had joined as beldar in the year, 1977 with Bhabha Construction Division No-II Katagaon, Kinnaur and continuously worked till 1988 and had completed 240 days of continuous service in terms of section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred as to Act). It is further stated that the petitioner became ill and after regaining her fitness in the month of August, 1998 she reported for duty at Bhabha Construction Division No. II and also submitted her medical-cum-fitness certificate for regularization of leave

which were taken on account of her illness and thereafter continued as beldar till 1995 on daily wage muster roll and she was assured by the Assistant Engineer that her case had been sent for regularization but she was not regularized and her services were illegally terminated in the year, 1995 without complying with the provisions of sections 25-F, 25-G and 25-H of the Act despite the fact that her juniors were retained and fresh hands were appointed. It is also stated that the petitioner submitted various representations to the Executive Engineer but nothing was done to regularize her services and her juniors were regularized and even the fresh hands appointed after the termination of the services of the petitioner have now been regularized. That the petitioner was assured that her case would be considered and she would be reinstated and regularized after granting the approval from the authorities at Shimla and thereafter the petitioner gave a legal notice and then she filed an Original Application before the Administrative Tribunal, Shimla which was subsequently withdrawn by her counsel due to lack of jurisdiction and thereafter the petitioner again approached the respondent to look into her case as she had no knowledge regarding legal technicalities but despite assurance and regular visit to the office of respondent nothing was done. That the services of the petitioner have wrongly been terminated in violation of the provisions of the Act. Against this back-drop it has been prayed that the petitioner be reinstated with seniority and continuity along-with full backwages.

3. By filing reply, the respondent contested the claim of the petitioner wherein preliminary objections have been taken *qua* maintainability, suppression of material facts, that the claim petition is hopelessly time barred and estoppel. On merits, it has been asserted that the petitioner was working as daily rated beldar under Bhabha Construction Division No. 2 from 1997 to 13-8-1988 and thereafter she remained absent from her duty from 13-8-1988 to 15-11-1988 and she was called by way of notice on 22-8-1988 to resume duty on or before 25-8-1988 but she failed to resume the duty, hence, her services were terminated on 16-11-1988 and thereafter due to the exigency of work, she was again engaged as fresh casual worker on 1-12-1994 but she left the services on her sweet will on 8-12-1994 and then she was again engaged on 1-9-1995 but left the service *w.e.f.* 12-4-1996. It is further asserted that the petitioner was orally requested to resume the duty but of no avail. That the petitioner had never completed 240 days in each preceding 12 months from the date she left the job and neither any junior to the petitioner had been retained nor any fresh hands were engaged. It is also asserted that the petitioner was given opportunities thrice by the respondent to continue with the service but she was habitual offender and remained absent without any intimation and left the job twice on her own sweet will, hence, she is not entitled to any relief. It is denied that the petitioner ever visited the office of the respondent for her re-engagement. It is further denied that the service of the petitioner were wrongly terminated in violation of the provisions of the Act. The respondent prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner reaffirmed her allegations by denying those of the respondent.

5. On the pleadings of the parties, the following issues were framed on 10-10-2017.

1. Whether the termination of the services of petitioner by the respondent during April, 1996 without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged? . .OPP.
2. If issue No.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? . .OPP.
3. Whether the petition is not maintainable as alleged? . .OPR.
4. Whether the petition is time barred as alleged? . .OPR.

5. Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No. 1 : No.

Issue No. 2 : Becomes redundant.

Issue No. 3 : No.

Issue No. 4 : Yes.

Relief : Reference answered in favour of the respondent and against the petitioner per operative part of award.

Reasons for findings

Issues No. 1 & 4 :

8. Being interlinked and correlated, all these issues are taken up together for decision.

9. The learned counsel for the petitioner contended that the services of the petitioner had been terminated by the respondent illegally without serving her any notice as required under section 25-F of the Act especially when she had completed more than 240 days in each calendar year. She further contended that the junior persons to the petitioner are still working with the respondent department and fresh workers have been engaged in violation of the provisions of section 25-G and 25-H of the Act.

10. On the other hand, learned counsel for the respondent contended that the claim of the petitioner is highly belated and stale. He further contended that the services of the petitioner had never been terminated by the respondent who had left the job at her own and even she had not completed 240 days in each calendar year. He also contended that no junior to the petitioner had been retained and no fresh hands had been engaged by the respondent, hence, she is not entitled to any relief.

11. To prove issue No. 1, the petitioner stepped into the witness box as PW-1 and tendered in evidence her affidavit Ex. PW-1/A wherein she reiterated almost all the averments as stated in the claim petition. She also tendered in evidence letter dated 13-3-1989, wage chart, experience certificates Mark PX-1 to Mark PX-5. In cross examination, she denied that she had not completed 240 days in any calendar year. She further denied that she had left the job twice at her own sweet will. She also denied that she was called by way of notice on 22-8-1998 to resume the duties on or before 25-8-1998. She denied that no junior person to her has been retained and no fresh hands have been engaged. She admitted that she had raised the industrial dispute on 16-10-2015.

12. On the other hand, the respondent examined one Shri Aditya Kharwal, Assistant Engineer as RW-1, who deposed that *vide* authority letter Ex. RW-1/A he has been authorized to depose in this case. He further deposed that the petitioner was engaged as daily waged beldar in the year, 1977 and worked as such till August, 1988 and thereafter the petitioner remained absent from

duty for which the Junior Engineer issued her notice dated 22-8-1988 Ex. RW-1/B wherein she was directed to report for duty till 25-8-1988 but she did not report for duty and thereafter her services were terminated on 16-11-1988 *vide* letter Ex. RW-1/C and then the petitioner was again re-engaged on 1-12-1994 but she again left the job at her own on 5-12-1994 and again she was engaged from 1-9-1995 and she again left the job on 12-4-1996 and she had worked only for 168 days and no junior to the petitioner was retained. In cross-examination, he admitted that the petitioner had worked with the board from 1977 to 1988 and placed on record the copy of mandays chart Ex. PX. He denied that the petitioner was engaged as beldar *w.e.f.* 1988 to 1995. He further denied that the record of the petitioner was intentionally withheld. He also denied that the petitioner had submitted a fitness certificate in August, 1988 for her regularization. He denied that the petitioner had given interview in the year, 1988 for her regularization. He further denied that the petitioner had time and again requested the respondent for reinstatement and regularization. He also denied that the services of the petitioner were illegally terminated in the year 1995.

13. I have closely scrutinized the entire evidence on record, and from the closer scrutiny thereof, it has become clear that the petitioner had worked as daily waged beldar initially *w.e.f.* the year, 1977 to August, 1988 and thereafter from 1-12-1994 to 5-12-1994 and from 1-9-1995 to 12-4-1996 with the respondent. It is also clear from the record that the petitioner had raised the demand notice on 16-10-2015. Now, the question which arises for consideration before this Court is as to whether the reference is stale and highly belated. The learned counsel for the petitioner contended that under the Industrial Disputes, no limitation is prescribed and the provision of Article 137 of the Limitation Act 1963 is not applicable to the proceedings under the Act and the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay. She further contended that the petitioner was earlier pursuing her remedy before the H.P. State Administrative Tribunal by filing an original application which was later on withdrawn by her counsel for want of jurisdiction and thereafter she raised the present industrial dispute.

14. As per the reference the petitioner was terminated during April, 1996 whereas the demand notice was raised by the petitioner on 16.10.2015 which fact has also been admitted by her in cross-examination. Therefore, the position of law in respect of a stale claim is required to be seen. **In (2013) 14 SCC 543, titled as Assistant Engineer Rajasthan State Agriculture Marketing Board, Sub Division Kota Vs. Mohan Lal**, it has been held by the Hon'ble Apex Court that though the Limitation Act is not applicable to the reference made under the I.D. Act but delay in raising industrial Dispute is an important circumstance for exercise of judicial discretion in determining relief that is to be granted. The relevant portion of aforesaid judgment is reproduced as under:

“19. We are clearly of the view that though the Limitation Act, 1963 is not applicable to the reference made under the ID Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Gitam Singh that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed.”

15. **In Assistant Executive Engineer, Karnataka Vs. Shivalinga reported in (2002) 10 SCC 167**, the services of the employee were terminated on 25-5-1985 and he approached the Labour Officer on 17-3-1995 and then the reference was made by the Government to the Labour Court. There was a delay of more than nine years in approaching the Labour Officer. In para 6 of the aforesaid judgment, the Hon'ble Apex Court has held as under:

"Learned counsel for the appellant strongly relied on the reasoning of the Labour Court and contended that the view of the High Court would not advance the cause of justice. Learned counsel for the respondent relied upon two decisions of this Court in Ajaib Singh vs. Sirhind Coop. Marketing-cum-Processing Service Society Ltd. (1999) 6 SCC 82 and Sapan Kumar Pandit vs. U.P. SEB (2001) 6 SCC 222 to contend that there is no period of limitation prescribed under the Industrial Disputes Act to raise the dispute and it is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part-payment of back wages. It is no doubt true that in appropriate cases, as held by this Court in the aforesaid two decisions, such steps could be taken by the Labour Court or the Industrial Tribunal, as the case may be, where there is no such dispute to relationship between the parties as employer and employee. In cases where there is a serious dispute, or doubt in such relationship and records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale. That is exactly the situation arising in this case. In that view of the matter, we think the two decisions relied upon by the learned counsel have no application to the case on hand."

Thus, it has been held that in case there is a serious dispute or doubt in such relationship and the records of the employer become relevant, the long delay would come in the way of maintenance of the same.

16. In Haryana State Coop. Land Development Bank Vs. Neelam reported in (2005) 5 SCC 91, the employee was discontinued from service *w.e.f.* 30-5-1986 and he raised the demand notice on 30-9-1993 and thereafter the reference was sent to the Labour court by the appropriate government. The Labour Court passed an order answering the reference against the employee holding that the claim was belated. Thereafter, a writ petition was filed before the Hon'ble High Court which was allowed and the employee was directed to be reinstated in service with continuity of service but without backwages. The Hon'ble Supreme Court set aside the judgment of the High Court and restored the judgment of the Labour Court as a result the reference stood answered against the workman. The relevant portion of the aforesaid judgment is reproduced as under:

13. "In Ajaib Singh (*supra*), the management did not raise any plea of delay. The Court observed that had such plea been raised, the workman would have been in a position to show the circumstances which prevented him in approaching the Court at an earlier stage or even to satisfy the Court that such a plea was not sustainable after the reference was made by the Government. In that case, the Labour Court granted the relief, but the same was denied to the workman only by the High Court. The Court referred to the purport and object of enacting Industrial Disputes Act only with a view to find out as to whether the provisions of the Article 137 of the Schedule appended to the Limitation Act, 1963 are applicable or not. Although, the Court cannot import a period of limitation when the statute does not prescribe the same, as was observed in Ajaib Singh (*supra*), but it does not mean that irrespective of facts and circumstances of each case, a stale claim must be entertained by the appropriate Government while making a reference or in a case where such reference is made the workman would be entitled to the relief at the hands of the Labour Court."

14. "The decision of Ajaib Singh (*supra*) must be held to have been rendered in the fact situation obtaining therein and no ratio of universal application can be culled out there from. A decision, as is well-known, is an authority of what it decides and not what can logically be deduced therefrom Bharat Forge Co. Ltd. Vs. Uttam Manohar Nakate, JT 2005 (1) SC 303], and Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav & Anr. para 42."

15" In *Balbir Singh vs. Punjab Roadways and Another* [(2001) 1 SCC 133], as regard Ajaib Singh (*supra*), this Court observed :

5." The learned counsel for the petitioner strenuously urged that the Tribunal committed error in denying relief to the workman merely on the ground of delay. The learned counsel submitted that in industrial dispute delay should not be taken as a ground for denying relief to the workman if the order/orders under challenge are found to be unsustainable in law. He placed reliance on the decision of this Court in the case of *Ajaib Singh vs. Sirhind Coop. Marketing-cum-Processing Service Society Ltd.* [(1999) 6 SCC 82 : 1999 SCC (L&S) 1054 : JT (1999) 3 SC 38].

6. "We have carefully considered the contentions raised by the learned counsel for the petitioner. We have also perused the aforementioned decision. We do not find that any general principle as contended by the learned counsel for the petitioner has been laid down in that decision. The decision was rendered on the facts and circumstances of the case, particularly the fact that the plea of delay was not taken by the management in the proceeding before the Tribunal. In the case on hand the plea of delay was raised and was accepted by the Tribunal. Therefore, the decision cited is of little help in the present case. Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the Tribunal depending on the facts and circumstances of the case. No doubt the discretion is to be exercised judicially."

16. "Yet again in *Assistant Executive Engineer, Karnataka Vs. Shivalinga* [(2002) 10 SCC 167], a Bench of this Court observed :

"6. Learned counsel for the appellant strongly relied on the reasoning of the Labour Court and contended that the view of the High Court would not advance the cause of justice. Learned counsel for the respondent relied upon two decisions of this Court in *Ajaib Singh vs. Sirhind Coop. Marketing-cum-Processing Service Society Ltd.* (1999) 6 SCC 82 and *Sapan Kumar Pandit vs. U.P. SEB* (2001) 6 SCC 222 to contend that there is no period of limitation prescribed under the Industrial Disputes Act to raise the dispute and it is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part-payment of back wages. It is no doubt true that in appropriate cases, as held by this Court in the aforesaid two decisions, such steps could be taken by the Labour Court or the Industrial Tribunal, as the case may be, where there is no such dispute to relationship between the parties as employer and employee. In cases where there is a serious dispute, or doubt in such relationship and records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale. That is exactly the situation arising in this case. In that view of the matter, we think the two decisions relied upon by the learned counsel have no application to the case on hand."

17. "In *Nedungadi Bank Ltd. (supra)*, a Bench of this Court, where S. Saghir Ahmad was a member [His Lordship was also a member in *Ajaib Singh (supra)*], opined :

"6. Law does not prescribe any time-limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be

exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made."

(Emphasis supplied).

17. In (2006) 5 SCC 433 in case titled as UP State Road Transport Corporation Vs. Babu Ram, the termination was dated 19-9-1983 and the reference was made on 29-8-1998. The Labour Court has held the termination as un-valid without considering the question of delay. The Hon'ble High Court dismissed the writ petition. The Hon'ble Supreme Court has held that no material was placed on record to show that the dispute was raised within reasonable time and the employee was not responsible for delay. The relevant portion of the aforesaid judgment is reproduced as under:

"10. It is to be noted that the High Court has very cryptically disposed of the writ petition. The workman has not placed any material to show that it had raised dispute within a reasonable time, and/or that he was not responsible for delayed decision if any in the conciliation proceedings. It was for him to show that the dispute was raised within a reasonable time and that he was not responsible for any delay. The High Court, on a hypothetical basis has assumed that the dispute might have been raised promptly but delayed by the State Government and he cannot be penalized for delay in finalizing the conciliation proceedings and the reference. But neither the Labour Court nor the High Court has even noted the factual position. The conclusion was based on surmises and conjectures."

18. In Assistant Engineer, CAD Kota Vs. Dhan Kunwar reported in (2006) 5 SCC 481, the delay was of about eight years in raising the dispute. The Labour Court granted reinstatement with 30 % back-wages. The writ petition and writ appeal filed by the employer were dismissed. However, the Hon'ble Apex Court set aside the judgments of Hon'ble High Court and the Labour Court and held that no relief should have been granted. The relevant portion of the aforesaid judgment is reproduced herein under:

"9. In the background of what has been stated above, the Labour Court should not have granted relief. Unfortunately, learned Single Judge and the Division Bench did not consider the issues in their proper perspective and arrived at abrupt conclusions without even indicating justifiable reasons.....

19. In UP State Road Transport Corporation Vs. Ram Singh and another (2008) 17 SCC 627, the termination was dated 15-3-1973 and the reference was dated 15-6-1986 and there was a delay of about 13 years in making the reference. The reference was dismissed on the ground of delay. The relevant portion of the aforesaid judgment reads as under:

"7. We are of the view that in the facts and circumstances of the case, the High Court erred in not setting aside the award of the Labour Court. Apart from the unacceptable manner in which the appellant was denied the opportunity of participating in the proceedings, including being debarred from cross examining the respondent, the Labour Court could not

have entertained the industrial dispute given the enormous delay. This Court has in several decisions held that while delay cannot by itself be sufficient reason to reject an industrial dispute, never the less the delay cannot be un-reasonable. The decision in Prakash Chander Sahu has reaffirmed this principle. The reason for diligence and promptness lies in the fact that the records pertaining to an employee might have been destroyed and it would be difficult to obtain witnesses who would be competent to give evidence so many years later if the Labour Court wishes to hold a further enquiry into the matter. In the present case, the delay of 13 years is unreasonable. The mere fact that the respondent was making repeated representations would not justify his raising the issue before the Labour Court after 13 years. In any event, the last representation was made in 1983 and the industrial dispute was admittedly raised in 1986. The lack of diligence on the part of the respondent is apparent."

20. In (2009) 13 SCC 746, State of Karnataka Vs. Ravi Kumar the Hon'ble Supreme Court dismissed the reference on the ground of delay and it was held that the person supervising could not be expected to prove after 14 years that the employee did not work or that he did not work for 240 days or he voluntarily left the job. The relevant portion of the aforesaid judgment reads as under:

"9. It is not possible to expect the Asstt. Executive Engineer to prove after 14 years that the daily wager did not work or that he did not work for 240 days in a year or that the daily wager voluntarily left the work.....

21. In a recent judgment of our Hon'ble High Court delivered in CWP No. 1912 of 2016 titled as Bego Devi Versus State of HP and others decided on 26-10-2016, it has been held as under:

"9. It is beaten law of land that delay takes away the settings of law. A person who does not seek relief within time, his petition has to be dismissed only on the grounds of delay and latches, otherwise, it would amount to gross misuse of jurisdiction and disturb the settled position".

22. In view of the aforesaid law laid down by the Hon'ble Apex Court, it is clear that though the Court cannot import the period of limitation and the reference cannot be dismissed merely on the ground of delay, it does not mean that irrespective of the facts and circumstances of the case, a stale claim must be entertained and the relief should be granted. In the case of delay, no formula of universal application can be laid down and it would depend on the facts and circumstances of each case. The delay would certainly be fatal if it has resulted in material evidence relevant to the adjudication being lost and rendered unavailable. The onus of showing that the dispute was raised within a reasonable time is upon the workman and it is for the workman to explain the delay by furnishing the acceptable explanation to the satisfaction of the Court that he was not responsible for the delay caused. The fact that the workman was making repeated representations/requests is not sufficient to explain the delay.

23. Keeping in view the aforesaid principles laid down by the Hon'ble Apex Court, the facts of this case are required to be seen. The services of the petitioner were stated to be terminated during April, 1996. Admittedly, the demand notice was raised by the petitioner on 16-10-2015 i.e after a period of about 19 years from the date of her termination. However, no plausible explanation has been furnished by the petitioner for not raising the demand notice within a reasonable period. Though, the petitioner has deposed in her evidence by way of affidavit that she filed an OA before the HP Administrative Tribunal which was withdrawn by her counsel due to lack of jurisdiction, however, neither the date of filing of OA nor the date of withdrawal of the same has been

mentioned by the petitioner. No order of the Administrative Tribunal has been placed on record by the petitioner. The burden of proof was upon the petitioner to show that the dispute was raised within a reasonable time and to offer an explanation to the satisfaction of this Court for the delay of 19 years caused in seeking reference but the petitioner has failed to discharge her burden. The reference is therefore stale and is liable to be rejected on the ground of delay in raising the dispute.

24. On merits, from the perusal of evidence led by the parties, the petitioner has failed to prove on record that she had worked for 240 days in preceding twelve months prior to her termination. In **2009 (120) FLR 1007 incase titled as Relip Nagarpalika Vs. Babuji Gabhaji Thakore and others**, the Hon'ble Supreme Court has held as under:

“The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer.”

In **AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amar Singh**, the Hon'ble Supreme Court has held that:—

“Incase workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated.”

A bare perusal of the extract of the judgments re-produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged on workman stepping in the witness box and adducing cogent evidence. RW-1 specifically deposed in his cross-examination that as per record the petitioner had worked for 186 days in the year 1979, 235 days in the year 1980, 122 days in the year 1981, 141 days in the year 1982, 215 days in the year 1983, 334 days in the year 1984, 336 days in the year 1985, 334 days in the year 1986, 330 days in the year 1987 and 258 days in the year 1988. RW-1 also stated in his deposition that the petitioner had worked only for 168 days *w.e.f.* 1.12.1994 to 12.4.1996. No evidence to the contrary has been led by the petitioner to show that she had completed 240 days in twelve calendar months preceding her termination. Hence, the case of the petitioner does not fall under section 25-F of the Industrial Disputes Act, 1947 and as such no protection of section 25-F can be granted to the petitioner.

25. The learned counsel for the petitioner next contended that at the time of the termination of the petitioner, the respondent had retained her juniors and had engaged fresh hands who are still working as such the respondent has violated the principles of “last come first go”. In her evidence by way of affidavit Ex. PW-1/A, the petitioner stated that her juniors were retained and fresh hands were engaged by the respondent. However, except for the statement of the petitioner, no evidence has been led by the petitioner to show that her juniors have been retained and fresh hands have been engaged by the respondent. Moreover, as observed earlier, the petitioner had raised the demand notice after a period of 19 years as such there is no question of consideration of equal treatment with the junior persons/fresh hands who have allegedly been retained/engaged. To take this view, I am fortified with the judgment of our own **Hon'ble High Court in CWP No. 4515/2012 decided on 13-6-2012, titled as Suraj Mani Vs. HPSEB** wherein it has been held that the petitioners cannot claim equal treatment after about two decades with the juniors who have allegedly been retained. The petitioner who slept for a long period of 19 years is not entitled to claim any relief on

the ground of equal treatment. Since, the reference has been proved to be stale and belated as such the protection of sections 25-G and 25-H of the Act cannot be granted to the petitioner. If the alleged termination of petitioner was either illegal or unjustified, she would not have kept silent for a period of 19 years.

26. Thus, keeping in view the above cited rulings and the material fact that the petitioner had raised the industrial dispute after lapse of about 19 years and remained silent during this period without any plausible explanation as such no relief can be granted to her. Hence, it cannot be said that the termination of the services of the petitioner is illegal and unjustified. Consequently, both these issues are answered against the petitioner.

Issue No. 2 :

27. Since, the petitioner has failed to prove issue No.1, above, this issue becomes redundant.

Issue No. 3 :

28. In support of this issue, no evidence has been led by the respondent. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Relief :

As a sequel to my findings on the aforesaid issues, the claim of the petitioner fails and is hereby dismissed. Consequently, the reference stands answered against the petitioner and in favour of the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 23rd Day of July, 2018.

Sd/-
 (SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Ref. No. 64 of 2018 alongwith

Application No. 61 of 2017

Instituted on 3-4-2018/9-6-2017

Decided on 31-7-2018

1. Satpal s/o Shri Taru Ram, R/o Village Chandpur, P.O. Kotri Byas, Tehsil Paonta Sahib, District, Sirmaur, H.P. presently serving as job rated worker on whole time basis as Ayurvedic Pharmacy Majra, Thesil Paonta Sahib, District Sirmaur, H.P.

2. Subhash Chand s/o Shri Balbir Singh, r/o Village Mazri, P.O. Majra, Tehsil Paonta Sahib, Distt. Sirmaur, H.P. presently serving as Job rated worker on whole time basis as Ayurvedic Pharmacy Majra, Tehsil Paonta, Distt. Sirmaur, H.P.
3. Khem Raj s/o Shri Mangal Singh, r/o Village Nayagran, P.O. Majra, Tehsil Paonta Sahib, Distt. Sirmoaur, H.P. presently serving as Job rated worker on whole time basis as Ayurvedic Pharmacy Majra, Tehsil Paonta, Distt. Sirmaur, H.P.
4. Sarver Ali s/o Shri Sarif Mohd. r/o Village Churak Mazari, P.O. Majra, Tehsil Paonta Sahib, Distt. Sirmaur, H.P. presently serving as Job rated worker on whole time basis as Ayurvedic Pharmacy Majra, Tehsil Paonta, Distt. Sirmaur, H.P.
5. Mohd. Daud s/o Shri Juina, r/o Village and P.O. Mitterwala, Tehsil Paonta Sahib, Distt. Sirmaur, H.P. presently serving as Job rated worker on whole time basis as Ayurvedic Pharmacy Majra, Tehsil Paonta, Distt. Sirmaur, H.P.
6. Mohan Singh s/o Shri Gulab Singh, r/o Village Totri, P.O. Byas, Tehsil Paonta Sabib, Distt. Sirmaur, H.P. presently serving as Job rated worker on whole time basis as Ayurvedic Pharmacy Majra, Tehsil Paonta, Distt. Sirmaur, H.P.
7. Sada Nand s/o Shri Hari Nand, r/o Village and P.O. Mitterwala, Tehsil Paonta Sahib, Distt. Sirmaur, H.P. presently serving as Job rated worker on whole time basis as Ayurvedic Pharmacy Majra, Tehsil Paonta, Distt. Sirmaur, H.P.
8. Karan Pal s/o Shri Puran Chand, r/o Village and P.O. Mazara, Tehsil Paonta Sahib, Distt. Sirmaur, H.P. presently serving as Job rated worker on whole time basis as Ayurvedic Pharmacy Kajra, Tehsil Paonta, Distt. Sirmaur, H.P.
9. Liyakt Ali s/o Shri Bawab Ali r/o Village Melion, P.O. Mazra, Tehsil Paonta Sahib, District Sirmaur, HP presently serving as Job rated worker on whole time basis as Ayurvedic Pharmacy Majra Tehsil Paonta Sahib, District Sirmaur, H.P. . .Petitioners.

Vs

1. The Director of Ayurveda with headquarters at Shimla, H.P.
2. The Incharge, Ayurvedic Dispensary Majra, District Sirmour, H.P. . .Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioners : Shri Ashwani Kumar Gupta, Advocate

For respondents : Shri Mahinder Singh, ADA.

AWARD

The following reference has been sent by the appropriate government for adjudication:

“Whether termination of the services of Shri Satpal s/o Shri Taru Ram & 8 other workers (as per Annexure-A) listed overleaf by The Director, Ayurveda, SDA Complex, Kasumti, Shimla-9 (H.P.) w.e.f. 17-12-2015, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not,

what relief including reinstatement, seniority, amount of back wages, past service benefits and compensation the above ex-workers are entitled to from the above employer?"

2. In nutshell the case of the petitioners is that they were engaged on job rate basis in Ayurvedic Pharmacy since 1998 and their services were retrenched illegally in November, 2015 by the concerned officer and no notice or any sort of compensation was given to them before terminating their services despite the fact that they had worked continuously in the department with 240 days of service in each calendar year. That the petitioners approached the Hon'ble High Court of HP through writ petition and the Hon'ble High Court directed the respondent to look into the matter and thereafter the claim of the petitioners was rejected by the respondent on 17-12-2015 without looking into the provisions of the Industrial Disputes Act, 1947 (hereinafter referred as to Act). That the action of the respondent is purely in violation of section 25-F of the Act and also amounts to gross unfair labour practice as the petitioners are the workmen as per the Act for all purpose and they had worked in the Ayurvedic Pharmacy from 10.00 AM to 5.00 PM. It is further stated that the petitioners served a demand notice on the respondents on 18-12-2016 and conciliation took place through the Labour Inspector Paonta Sahib but no conclusion was arrived. That the action of the respondents in retrenching their services without complying with the mandatory provisions of the Act is unjustified and against law. Against this backdrop a prayer has been made that the respondents be ordered to reinstate the petitioners in service with all the benefits including back wages.

3. By filing reply, the respondents contested the claim of the petitioner wherein preliminary objections have been taken *qua* maintainability, that the petitioners were not engaged under R& P Rules etc. On merits, it has been asserted that the petitioners were engaged on job rate basis during the year 1998 and they worked with Government Ayurvedic Pharmacy Majra District Sirmaur when there was availability of work and new material with the department till November, 2014. It is denied that their services were retrenched illegally in November, 2015. It is asserted that since their engagements were not under the R&P Rules, hence, there arose no question of any demand notice and compensation and even the petitioners used to submit bills for the work done by them and the payment was being made to them accordingly. It is denied that the petitioners had worked with the department for 240 days in each calendar year. It is further denied that the respondents have acted in violation of provisions of section 25-F of the Act. With the aforesaid averments the respondents prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioners reiterated the allegations as made in the claim petition by denying those of the respondents.

5. On the pleadings of the parties, the following issues were framed on 2-12-2017.

1. Whether the termination of the services of the petitioners by the respondents during November, 2015 without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified? . .OPP.
2. If issue No. 1 is proved in affirmative, to what relief of service benefits the petitioners are entitled? . .OPP.
3. Whether the petition is not maintainable as alleged? . .OPR.
4. Relief.

6. I have heard the learned counsel for the petitioner and learned ADA for respondents and also gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No. 1 : No.

Issue No. 2 : Becomes redundant

Issue No. 3 : No.

Relief : Reference alongwith application No. 61 of 2017 are answered in favour of the respondents and against the petitioners per operative part of award.

Reasons for findings

Issues No. 1 :

8. The learned counsel for the petitioners contended that the services of the petitioners have been terminated by the respondents illegally without serving them any notice as required under section 25-F of the Act especially when they have completed more than 240 days in each calendar year and in twelve calendar months preceding their termination.

9. On the other hand, the learned ADA for the respondents contended that the services of the petitioners were engaged purely on periodic basis for doing multifarious works for which they used to submit bills for the work done by them and even they used to join and leave the work at their own. He further contended that the petitioners were not engaged under R&P Rules, hence, the provision of section 25-F of the Act is not applicable to them.

10. To prove their case, the petitioners examined Shri Sat Pal as PW-1 who deposed that they were engaged in May, 1998 and continuously worked till November, 2014 and thereafter their services were terminated without any notice and without any compensation. He further stated that all of them have completed more than 240 days of service in each calendar year since the date of their engagement on job rate basis and thereafter they are not gainfully employed anywhere. In cross-examination, he denied that their engagement with the department was purely on periodic basis for doing multifarious works. He further denied that they did not use to work from 10.00 AM to 5.00 PM and their attendance was not marked from 10.00 AM to 5.00 PM. He also denied that they were being paid wages on the basis of work done and not on daily wages basis. He denied that they were called as and when required on the basis of the availability of work. He admitted that neither any appointment letter nor any termination notice was issued by the department. He denied that they have never completed 240 days in any calendar year.

11. On the other hand, the respondents have examined Dr. Asdesh Goyal as RW-1 who tendered in evidence his affidavit Ex. RW-1/A wherein he has reiterated almost all the averments as made in the reply filed by the respondents. He also tendered in evidence authority letter Ex. RW 1/B, copy of letter dated 10-2-1998 Ex/ RW-1/C, copy of letter dated 16-2-1999 Ex. RW-1/D, letter dated 10-2-1999 Ex. RW-1/E, letter dated 2-7-1999 Ex. RW-1/F, letter dated 24-6-1999 Ex. RW-1/G, letter dated 2-3-2000 Ex. RW-1/H, copy of treasury abstract Ex. RW-1/J, copies of bills of the petitioners Ex. RW-1/K to Ex. RW-1/K-9 and copy of order dated 17-12-2015 Ex. RW-1/L. In cross-examination he admitted that the petitioners had worked *w.e.f.* the year, 1998 till November, 2014. He denied that the petitioners have worked continuously during the aforesaid period. He stated that no notice was issued and no compensation was paid to the petitioners prior to their termination as they were not the regular workers. He denied that the services of the petitioners were terminated in order to deprive them from regularization.

12. I have closely scrutinized the entire evidence on record, and from the closer scrutiny thereof, it has become clear that the petitioners were engaged on job rated basis. The case of the petitioners is that they had continuously worked with the respondents and had completed 240 days in each calendar year. However, to prove such contention no evidence has been produced by them which could go to show that they have completed 240 days in each calendar year and in twelve calendar months preceding their termination. In **2009 (120) FLR 1007 incase titled as Relip Nagarpalika Vs. Babuji Gabhaji Thakore and others**, the Hon'ble Supreme Court has held as under:

“The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer.”

In **AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amar Singh**, the Hon'ble Supreme Court has held that:—

“In case workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated.”

A bare perusal of the extract of the judgment re-produced, hereinabove, shows that the burden to prove completion of 240 days in each calendar year and in preceding twelve months lies on the workman and this burden is discharged on workman stepping in the witness box and adducing cogent evidence. However, in the instant case, the petitioners have failed to prove on record that they had put in 240 days in each calendar year and in twelve calendar months preceding their termination. There is no *iota* of evidence which could go to show that the petitioners had completed 240 working days in twelve calendar months preceding their termination. Hence, the case of the petitioners does not fall under section 25-F of the Industrial Disputes Act, 1947 and as such no protection of section 25-F can be granted to the petitioners.

13. Moreover the provisions of section 25-F of the Act cannot be made applicable in the present case in view of the fact that the petitioners were engaged purely on periodic basis for doing multifarious works and they were not appointed to any regular post. It has been admitted by the petitioners in their claim petition that they were engaged on job rated basis in the Ayurvedic Pharmacy since the year, 1998 and their services were retrenched in November, 2015. PW-1 also stated in his examination-in-chief that they were engaged on job rate basis. Therefore, from the admission of the petitioners themselves, it has become clear that neither they were the daily paid workers nor they were the regular workers. Even some of the workers had given their consent to work on job rate basis *vide* letters Ex. RW-1/E, Ex. RW-1/F, Ex. RW-1/G and Ex. RW-1/H and the payments were given to them on producing the bills by them for the work done by them. PW-1 also admitted in his cross-examination that neither any appointment letter nor any termination notice was issued by the department. The petitioners have failed to produce any evidence on record that they were engaged under R&P Rules rather the perusal of the entire evidence on record shows that they were engaged purely on periodic basis for doing multifarious work. The petitioners did not hold a regular post nor did they have any right on the said post. In **(2006) 6 SCC 221, case titled as Reserve Bank of India V. Gopinath Sharma & Anr.** it has been held by the Hon'ble Supreme

Court that workman not appointed to any regular post but engaged on the basis of need of work on day to day basis, had no right to the post.

14. It has also been held by the Hon'ble Supreme Court in **2006 (2) SCC 794** in case titled as **Haryana State Agricultural Marketing Board Vs. Subhash Chand & Anr.** the Hon'ble Supreme Court that the Chapter-V-A of the Act would not be applicable in case the termination of the services of the workman is in view of the exception contained in clauses (bb) of section 2(oo) of the Act. The relevant portion of the aforesaid judgment is reproduced as under:

“11. The question as to whether Chapter V-A of the Act will apply or not would be dependent on the issue as to whether an order of retrenchment comes within the purview of Section 2 (oo) (bb) of the Act or not. If the termination of service in view of the exception contained in clauses (bb) of Section 2(oo) of the Act is not a 'retrenchment', the question of applicability of Chapter V-A thereof would not arise.

12. Central Bank of India Vs. S. Stayam whereupon reliance was placed by Mr. Singh, is itself an authority for the proposition that the definition of 'retrenchment' as contained in the said provision is wide. Once it is held that having regard to the nature of termination of services it would not come within the purview of the said definition, the question of applicability of Section 25-G of the Act does not arise.”

15. In the instant case, the petitioners were engaged purely on periodic basis for doing multifarious works and were not appointed to any regular post. Thus, on the basis of the above cited rulings and also having regard to the entire evidence on record, it can safely be concluded that the petitioners had been engaged purely on periodic basis for doing multifarious work, who were not retrenched within the meaning of section 2(oo) of the Industrial Disputes Act, 1947. The case of the petitioners fall within the exception as provided under section 2(oo)(bb) of the Act as such the provisions of Chapter VA of the Act would not be applicable.

16. Therefore, in view of my foregoing discussion and also in view of entire evidence on record, the petitioners have failed to prove that their services were terminated by the respondents in violation of the provisions of the Act. Accordingly, this issue is decided in favour of the respondents and against the petitioners.

Issue No. 2 :

17. Since, the petitioners have failed to prove issue No.1, above, this issue becomes redundant.

Issue No. 3 :

18. In support of this issue, no evidence has been led by the respondents which could go to show as to why the petition is not maintainable. Moreover, after raising the demand notice, the petitioners have filed the present petition directly before this Court and thereafter the appropriate government had referred the dispute under reference to this Court for adjudication and *vide* order dated 5-7-2018 this Court clubbed the application with the reference, hence, it cannot be said that the claim of the petitioners is not maintainable. Furthermore, I find nothing wrong with this claim petition which is perfectly maintainable in the present form. Accordingly, this issue is decided in favour of the petitioners and against the respondents.

Relief :

As a sequel to my findings on the aforesaid issues, the claim petition under section 2-A of the Act filed by the petitioners fails and is hereby dismissed. Consequently, the reference stands answered against the petitioners and in favour of the respondents. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 31st Day of July, 2018.

Sd/-
 (SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

App. No. 54 of 2017

Instituted on 9-6-2017

Decided on 2-7-2018

Desh Raj s/o Shri Karam Chand r/o Village Tikar *via* Jamni, Tehsil Sarkaghat, District Mandi, HP. . .Petitioner.

Vs.

1. The Executive Director (personnal) Vidyut Bhawan, Kumar House, Shimla-4.
2. The Labour Officer-cum-Conciliation Officer, Shimla, HP. . .Respondent.

Application under section 2-A of the Industrial Disputes Act, 1947

For petitioner : Shri Sameer Thakur, Advocate.

For respondent No. 1 : Shri Rajinder, Advocate *vice* Shri Ramakant Sharma, Advocate.

For respondent No. 2 : Shri Mahinder singh, ADA.

AWARD/ORDER

Facts in brief as narrated in the application are that the petitioner was initially engaged as beldar on daily wage basis by the respondent No.1 on 15-6-1995 and worked as such till 14-3-1997 and his services were terminated *vide* order dated 3-3-1997 *w.e.f.* 14-3-1997 and thereafter during May, 1997, he filed an Original Application before the Administrative Tribunal wherein a direction was given to the Board to re-engage him as per his seniority as and when the work is available. The petitioner used to visit the office of Board off and on with the request for his re-engagement but despite assurance he was not re-engaged. It is further stated that during the year, 2002, he came to know that one Shri Ranjeet Singh had been reengaged by the Board on the direction given by

Administrative Tribunal and on that strength he submitted a representation for his re-engagement on 12-8-2002 but he was not re-engaged and thereafter he filed another Original Application before the Administrative Tribunal during Jan., 2004 but the same was dismissed on default on 8-6-2006. Thereafter he submitted a demand notice dated 25-2-2008 and the same remained pending before the Conciliation Officer and thereafter he submitted representations dated 28-4-2008 and 9-4-2009 but despite that nothing has been heard and thereafter on 29-8-2010 he submitted an application under RTI Act to the Labour Inspector and he got the information *vide* letter dated 13-10-2010 whereby he was advised to send the representation to the Secretary HBSEBL and thereafter he filed an application under RTI Act before the Board and the respondent board *vide* letter dated 6-8-2010 supplied the information and thereafter he filed detailed representation on 15-3-2012 requesting the board to re-engage him on daily wage basis and thereafter he filed writ petition No. 2838/2012 before the Hon'ble High Court whereby the Hon'ble High Court *vide* order dated 25-4-2012 directed the respondent to take an appropriate action on his representation after affording him an opportunity of being heard upon which the Executive Director (Personal) *vide* order dated 26-6-2012 rejected his claim for re-engagement without any speaking order. It is also stated that after the rejection of his representation he filed an writ petition No, 6704/2012 before the Hon'ble High Court which was decided on 11-4-2016 and he had been given liberty to seek appropriate remedy. It is stated that *w.e.f.* 15-6-1995 to 14-3-1997, he had worked continuously without any break and had completed 240 days in each calendar year and his services have been terminated *w.e.f.* 14-3-1997 without complying with the mandatory provisions of Industrial Disputes Act, 1947 (hereinafter referred as to Act) as neither any notice under section 25-f of the Act was issued nor he was paid compensation and even his juniors namely Ranjeet Singh and Khem Raj have also been employed in violation of the provisions of section 25-G of the Act. Against this back-drop a prayer has been made that he be reinstated/regularized as beldar *w.e.f.* 14-3-1997 with full backwages and interest @ 9% with seniority and continuity.

2. By filing reply, the respondent No.1 contested the claim of the petitioner wherein preliminary objections have been taken *qua* maintainability, estoppel and barred by limitation. On merits, it has been asserted that the petitioner had worked with the Board to maintain electricity supply of Shimla Town *w.e.f.* 15-6-1995 to 14-3-1997 and thereafter his services were terminated by serving a notice dated 3-3-1997. It is further asserted that the respondent Board had never assured the petitioner for his re-engagement as the post of the petitioner was seasonal one and the work which he was performing was intermittent and at present no work is available, hence, his services could not be reengaged. It is denied that the respondent Board had engaged Shri Ranjeet Singh who is junior to the petitioner in his place. It is asserted that the petitioner had worked intermittently from 15-6-1995 to 14-3-1997 and had not completed 240 days in any calendar year, hence, there is no requirement of service the notice under section 25-F of the Act and since no junior person to the petitioner has been retained as such there is no violation of section 25-G and 25-H of the Act. The respondent No.1 prayed for the dismissal of the claim petition.

3. By filing separate reply, the respondent No. 2 contested the claim of the petitioner wherein preliminary objection *qua* maintainability has been taken. On merits, it has been asserted that the petitioner raised the demand notice dated 25-2-2008 upon which the Labour Inspector-cum-Conciliation Officer issued notice for appearance to both the parties and after considering the case, the petitioner was advised to file an application to the Assistant Executive Engineer, City Electrical Sub Division HPSEBL Boileuganj for implementation of the orders passed by the Administrative Tribunal in OA No. 483/1997. Thereafter a demand notice 5-5-2016 was received in the office of respondent No. 2 upon which the conciliation meetings were held but the dispute was not resolved, hence, a failure report under section 12(4) of the Act was sent to the Labour Commissioner. The respondent No. 2 also prayed for the dismissal of the claim petition.

4. By filing rejoinders to the replies filed by the respondents, the petitioner reaffirmed his allegations by denying those of the respondents.

5. On the pleadings of the parties, the following issues were framed on 26-12-2017.

1. Whether the termination of the services of petitioner by the respondent *w.e.f.* 14-3-1997 without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified?
..OPP.
2. If issue No.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled?
..OPP.
3. Whether the petition is not maintainable as alleged? ..OPR.
4. Whether the petition is time barred as alleged? ..OPR.
5. Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No. 1 : No.

Issue No. 2 : Becomes redundant.

Issue No. 3 : Yes.

Issue No. 4 : Yes.

Relief : Application dismissed per operative part of order.

Reasons for findings

Issues No.1, 3 & 4 :

8. Being interlinked and correlated, all these issues are taken up together for decision.

9. The learned counsel for the petitioner contended that the services of the petitioner had been terminated by the respondent illegally without serving him any notice as required under section 25-F of the Act especially when he had completed more than 240 days in each calendar year. He further contended that the junior persons to the petitioner are still working with the respondent and fresh workers have been engaged in violation of the provisions of section 25-G and 25-H of the Act.

10. On the other hand, learned *vice Csl.* Counsel for the respondent No.1 contended that the claim of the petitioner is highly belated and stale. He further contended that the services of the petitioner had been engaged for specific work and after the completion of work, his services were terminated by giving him a notice. He further contended that the petitioner had not completed 240 days in any calendar year and no junior to the petitioner had been retained and no fresh hands had been engaged by the respondent, hence, he is not entitled to any relief.

11. To prove issue No.1, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he reiterated almost all the averments as stated in the

claim petition. He also tendered in evidence the copies of seniority lists Mark PX and Mark PY. In cross-examination on behalf of respondent No.1 he admitted that he had been engaged on 15-6-1995 as beldar. He further admitted that a notice was issued by the Board prior to his termination on 3.3.1997. He also admitted that he had not completed 240 days in any calendar year. He denied that neither any junior persons were retained nor any fresh hands have been engaged after his termination. He further denied that the work is not available with the Board. When cross-examined on behalf of respondent No. 2, he admitted that he had written a letter Mark RX to Assistant Executive Engineer on 25-2-2008 and a copy of the same was given to Labour-cum-Conciliation Officer Shimla. He further admitted that in the conciliation meeting before the Conciliation Officer both the parties appeared on 7-4-2008. He also admitted that he had filed an application Mark RX-1 before the Conciliation Officer Shimla and Board had also filed the reply.

12. PW-2 Shri Prakash Chand, Senior Assistant has brought the detail of working period Ex. PW-2/A pertaining to the petitioner. In cross-examination on behalf of respondent No. 2 he admitted that the petitioner had never completed 240 days in any calendar year.

13. The respondent No.1 has examined one Shri Dalip Kumar SDO, Electric Sub Division Boileauganj as RW-1, who deposed that the petitioner had worked at Sub Division Boileauganj *w.e.f.* 15-3-1995 to 3-3-1997 with intermittent breaks and he had never completed 240 days in any calendar year. He further deposed that the juniors have been retained only on the orders of the Court. He also deposed that the petitioner had filed an Original Application before the Administrative Tribunal but the same was dismissed and thereafter he had filed a writ petition before the Hon'ble High Court which was also dismissed. He deposed that the board had issued a notice dated 3-3-1997 to the petitioner for resumption of the duties but despite that he had not turned up and he had raised the Industrial Dispute after 21 years. In cross-examination on behalf of respondent No. 2 he admitted that the conciliation proceedings were held before the Labour-cum-Conciliation Officer Shimla on 7-4-2008 and 28-4-2008. When crossexamined on behalf of petitioner he admitted that the petitioner was engaged for renewal and maintenance work. He further admitted that the renewal and maintenance work is available throughout the year. He denied that the services of the petitioner were terminated illegally.

14. The respondent No. 2 examined one Shri Sohan Lal Jalota, Labour Inspector as RW-2 who deposed that *vide* authority letter Ex. RW-2/A he has been authorized to depose on behalf of the respondent No. 2. He also tendered in evidence the copy of demand notice raised by the petitioner Ex. RW-2/B, reply to demand notice field by respondent No. 1 Ex. RW-2/C, application filed by the petitioner on 29-8-2010 Ex. RW-2/D. he further deposed that the petitioner again raised the demand notice on 5-5-2016 and conciliation proceedings were held on 24-5-2016 and thereafter the failure report was submitted to the Labour Commissioner *vide* Ex. RW-2/E.

15. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner had worked with the respondent *w.e.f.* 15-6-1995 to 1-5-1997 which fact is evident from the detail of working period pertaining to petitioner Ex. PW 2/A. From the perusal of Ex. PW-2/A, is also clear that the petitioner had not completed 240 days in any calendar year and in preceding twelve calendar months preceding his termination. It is also clear from the record that the present application has been filed by the petitioner on 5-6-2017 *i.e* after a gap of more than 20 years. Now, the question which arises for consideration before this Court is as to whether the application is stale and highly belated. The learned counsel for the petitioner contended that under the Industrial Disputes, no limitation is prescribed and the provision of Article 137 of the Limitation Act 1963 is not applicable to the proceedings under the Act and the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay. Therefore, the position of law in respect of a stale claim is required to be seen.

16. **In (2013) 14 SCC 543, titled as Assistant Engineer Rajasthan State Agriculture Marketing Board, Sub Division Kota Vs. Mohan Lal,** it has been held by the Hon'ble Apex

Court that though the Limitation Act is not applicable to the reference made under the I.D. Act but delay in raising industrial Dispute is an important circumstance for exercise of judicial discretion in determining relief that is to be granted. The relevant portion of aforesaid judgment is reproduced as under:

“19. We are clearly of the view that though the Limitation Act, 1963 is not applicable to the reference made under the ID Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Gitam Singh that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed.”

17. In Assistant Executive Engineer, Karnataka Vs. Shivalinga reported in (2002) 10 SCC 167, the services of the employee were terminated on 25-5-1985 and he approached the Labour Officer on 17-3-1995 and then the reference was made by the Government to the Labour Court. There was a delay of more than nine years in approaching the Labour Officer. In para 6 of the aforesaid judgment, the Hon'ble Apex Court has held as under:

“Learned counsel for the appellant strongly relied on the reasoning of the Labour Court and contended that the view of the High Court would not advance the cause of justice. Learned counsel for the respondent relied upon two decisions of this Court in Ajaib Singh vs. Sirhind Coop. Marketing-cum-Processing Service Society Ltd. (1999) 6 SCC 82 and Sapan Kumar Pandit vs. U.P. SEB (2001) 6 SCC 222 to contend that there is no period of limitation prescribed under the Industrial Disputes Act to raise the dispute and it is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part-payment of back wages. It is no doubt true that in appropriate cases, as held by this Court in the aforesaid two decisions, such steps could be taken by the Labour Court or the Industrial Tribunal, as the case may be, where there is no such dispute to relationship between the parties as employer and employee. In cases where there is a serious dispute, or doubt in such relationship and records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale. That is exactly the situation arising in this case. In that view of the matter, we think the two decisions relied upon by the learned counsel have no application to the case on hand.”

Thus, it has been held that in case there is a serious dispute or doubt in such relationship and the records of the employer become relevant, the long delay would come in the way of maintenance of the same.

18. In Haryana State Coop. Land Development Bank Vs. Neelam reported in (2005) 5 SCC 91, the employee was discontinued from service *w.e.f.* 30-5-1986 and he raised the demand notice on 30-9-1993 and thereafter the reference was sent to the Labour court by the appropriate government. The Labour Court passed an order answering the reference against the employee holding that the claim was belated. Thereafter, a writ petition was filed before the Hon'ble High Court which was allowed and the employee was directed to be reinstated in service with continuity of service but without backwages. The Hon'ble Supreme Court set aside the judgment of the High Court and restored the judgment of the Labour Court as a result the reference stood answered against the workman. The relevant portion of the aforesaid judgment is reproduced as under:

13. "In Ajaib Singh (*supra*), the management did not raise any plea of delay. The Court observed that had such plea been raised, the workman would have been in a position to show the circumstances which prevented him in approaching the Court at an earlier stage or even to satisfy the Court that such a plea was not sustainable after the reference was made by the Government. In that case, the Labour Court granted the relief, but the same was denied to the workman only by the High Court. The Court referred to the purport and object of enacting Industrial Disputes Act only with a view to find out as to whether the provisions of the Article 137 of the Schedule appended to the Limitation Act, 1963 are applicable or not. Although, the Court cannot import a period of limitation when the statute does not prescribe the same, as was observed in Ajaib Singh (*supra*), but it does not mean that irrespective of facts and circumstances of each case, a stale claim must be entertained by the appropriate Government while making a reference or in a case where such reference is made the workman would be entitled to the relief at the hands of the Labour Court."

14. "The decision of Ajaib Singh (*supra*) must be held to have been rendered in the fact situation obtaining therein and no ratio of universal application can be culled out therefrom. A decision, as is well-known, is an authority of what it decides and not what can logically be deduced therefrom Bharat Forge Co. Ltd. Vs. Uttam Manohar Nakate, JT 2005 (1) SC 303, and Kalyan Chandra Sarkar vs. Rajesh Ranjan @ Pappu Yadav & Anr. para 42."

15. "In Balbir Singh Vs. Punjab Roadways and Another [(2001) 1 SCC 133], as regard Ajaib Singh (*supra*), this Court observed :

5. "The learned counsel for the petitioner strenuously urged that the Tribunal committed error in denying relief to the workman merely on the ground of delay. The learned counsel submitted that in industrial dispute delay should not be taken as a ground for denying relief to the workman if the order/orders under challenge are found to be unsustainable in law. He placed reliance on the decision of this Court in the case of Ajaib Singh vs. Sirhind Coop. Marketing-cum-Processing Service Society Ltd. (1999) 6 SCC 82 : 1999 SCC (L&S) 1054 : JT (1999) 3 SC 38).

6. "We have carefully considered the contentions raised by the learned counsel for the petitioner. We have also perused the aforementioned decision. We do not find that any general principle as contended by the learned counsel for the petitioner has been laid down in that decision. The decision was rendered on the facts and circumstances of the case, particularly the fact that the plea of delay was not taken by the management in the proceeding before the Tribunal. In the case on hand the plea of delay was raised and was accepted by the Tribunal. Therefore, the decision cited is of little help in the present case. Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the Tribunal depending on the facts and circumstances of the case. No doubt the discretion is to be exercised judicially."

16. "Yet again in Assistant Executive Engineer, Karnataka Vs. Shivalinga [(2002) 10 SCC 167], a Bench of this Court observed :

"6. Learned counsel for the appellant strongly relied on the reasoning of the Labour Court and contended that the view of the High Court would not advance the cause of justice. Learned counsel for the respondent relied upon two decisions of this Court in Ajaib Singh Vs. Sirhind Coop. Marketing-cum-Processing Service Society Ltd. (1999) 6 SCC 82 and Sapan Kumar Pandit Vs. U.P. SEB (2001) 6 SCC 222 to contend that there is no period of limitation prescribed under the Industrial Disputes Act to raise the

dispute and it is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part-payment of back wages. It is no doubt true that in appropriate cases, as held by this Court in the aforesaid two decisions, such steps could be taken by the Labour Court or the Industrial Tribunal, as the case may be, where there is no such dispute to relationship between the parties as employer and employee. In cases where there is a serious dispute, or doubt in such relationship and records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale. That is exactly the situation arising in this case. In that view of the matter, we think the two decisions relied upon by the learned counsel have no application to the case on hand."

17. "In Nedungadi Bank Ltd. (*supra*), a Bench of this Court, where S. Saghir Ahmad was a member [His Lordship was also a member in Ajaib Singh (*supra*), opined :

"6. Law does not prescribe any time-limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made."

(Emphasis supplied).

19. **In (2006) 5 SCC 433 in case titled as UP State Road Transport Corporation Vs. Babu Ram,** the termination was dated 19-9-1983 and the reference was made on 29-8-1998. The Labour Court has held the termination as un-valid without considering the question of delay. The Hon'ble High Court dismissed the writ petition. The Hon'ble Supreme Court has held that no material was placed on record to show that the dispute was raised within reasonable time and the employee was not responsible for delay. The relevant portion of the aforesaid judgment is reproduced as under:

"10. It is to be noted that the High Court has very cryptically disposed of the writ petition. The workman has not placed any material to show that it had raised dispute within a reasonable time, and/or that he was not responsible for delayed decision if any in the conciliation proceedings. It was for him to show that the dispute was raised within a reasonable time and that he was not responsible for any delay. The High Court, on a hypothetical basis has assumed that the dispute might have been raised promptly but delayed by the State Government and he cannot be penalized for delay in finalizing the conciliation proceedings and the reference. But neither the Labour Court nor the High Court has even noted the factual position. The conclusion was based on surmises and conjectures."

20. **In Assistant Engineer, CAD Kota Vs. Dhan Kunwar reported in (2006) 5 SCC 481,** the delay was of about eight years in raising the dispute. The Labour Court granted

reinstatement with 30 % back-wages. The writ petition and writ appeal filed by the employer were dismissed. However, the Hon'ble Apex Court set aside the judgments of Hon'ble High Court and the Labour Court and held that no relief should have been granted. The relevant portion of the aforesaid judgment is reproduced herein under:

“9. In the background of what has been stated above, the Labour Court should not have granted relief. Unfortunately, learned Single Judge and the Division Bench did not consider the issues in their proper perspective and arrived at abrupt conclusions without even indicating justifiable reasons.....

21. In UP State Road Transport Corporation Vs. Ram Singh and another (2008) 17 SCC 627, the termination was dated 15-3-1973 and the reference was dated 15-6-1986 and there was a delay of about 13 years in making the reference. The reference was dismissed on the ground of delay. The relevant portion of the aforesaid judgment reads as under:

“7. We are of the view that in the facts and circumstances of the case, the High Court erred in not setting aside the award of the Labour Court. Apart from the unacceptable manner in which the appellant was denied the opportunity of participating in the proceedings, including being debarred from crossexamining the respondent, the Labour Court could not have entertained the industrial dispute given the enormous delay. This Court has in several decisions has held that while delay cannot by itself be sufficient reason to reject an industrial dispute, never the less the delay cannot be un-reasonable. The decision in Prakash Chander Sahu has reaffirmed this principle. The reason for diligence and promptness lies in the fact that the records pertaining to an employee might have been destroyed and it would be difficult to obtain witnesses who would be competent to give evidence so many years later if the Labour Court wishes to hold a further enquiry into the matter. In the present case, the delay of 13 years is unreasonable. The mere fact that the respondent was making repeated representations would not justify his raising the issue before the Labour Court after 13 years. In any event, the last representation was made in 1983 and the industrial dispute was admittedly raised in 1986. The lack of diligence on the part of the respondent is apparent.”

22. In a recent judgment of our **Hon'ble High Court delivered in CWP No. 1912 of 2016 titled as Bego Devi Versus State of HP and others decided on 26-10-2016**, it has been held as under:

“9. It is beaten law of land that delay takes away the settings of law. A person who does not seek relief within time, his petition has to be dismissed only on the grounds of delay and latches, otherwise, it would amount to gross misuse of jurisdiction and disturb the settled position”.

23. Keeping in view the aforesaid principles laid down by the Hon'ble Apex Court, the facts of this case are required to be seen. The services of the petitioner were terminated on 14-3-1997 and he filed the present application on 5-6-2017 *i.e* after a period of more than 20 years. In his evidence by way of affidavit Ex. PW-1/A, the petitioner stated that he used to visit the office of respondent board off and on with a request for his re-engagement. However, no evidence in this respect has been placed on record by the petitioner. He further deposed that he submitted fresh demand notice dated 5-5-2016, however, no concrete action has been taken in the matter till date, hence, he filed the present application under section 2-A of the Act. At this stage, it would be relevant to reproduce section 2-A of the Act which reads as under:

“2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.

(1) Where any employer discharges, dismisses, retrenches, or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

(2)

(3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1)."

The perusal of sub section (3) of section 2-A of the Act reveals that limitation is prescribed for moving the application under section 2-A of the Act which shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service. In the present case as observed earlier according to the petitioner himself his services were terminated *vide* order dated 3-3-1997 *w.e.f.* 14-3-1997. However, the present application has been filed by him on 5-6-2017 after more than 20 years from the date of his termination *i.e.* much after the period of limitation as prescribed under sub section (3) of section 2A of the Act. Therefore, the present application is hopelessly barred by limitation and is not maintainable and liable to be dismissed on the ground of delay in making the application.

24. On merits, from the perusal of evidence led by the parties, the petitioner has failed to prove on record that he had worked for 240 days in preceding twelve months prior to his termination. **In 2009 (120) FLR 1007 incase titled as Relip Nagarpalika Vs. Babuji Gabhaji Thakore and others**, the Hon'ble Supreme Court has held as under:

"The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer."

In AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amar Singh, the Hon'ble Supreme Court has held that:—

"Incase workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated."

A bare perusal of the extract of the judgment re-produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged on workman stepping in the witness box and adducing cogent evidence. However, the petitioner as PW-1 himself admitted in cross-examination that he had not completed 240 days in any calendar year. The petitioner has failed to prove on record that he had put in 240 days in twelve calendar months preceding his termination. There is no *iota* of evidence which could go to show that the petitioner had completed 240 working days in twelve calendar months preceding his termination. Hence, the case of the petitioner does not fall under section 25-F of the Industrial Disputes Act, 1947 and as such no protection of section 25-F can be granted to the petitioner.

25. The learned counsel for the petitioner next contended that at the time of the termination of the petitioner, the respondent No.1 had retained his juniors and had engaged fresh hands who are still working as such the respondent had violated the principle of "last come first go". However, no satisfactory evidence has been led by the petitioner to this effect. The seniority lists Mark PX and Mark PY have not been proved by the petitioner in accordance with law. Therefore, no credence can be attached to the same. No other documentary evidence has been placed on record by the petitioner that after his termination, his juniors were retained. Even, the petitioner has failed to depose in his evidence by way of affidavit that his juniors were retained and fresh hands have been engaged after his termination. Moreover, as observed earlier, the petitioner had filed the present application after a period of 20 years as such there is no question of consideration of equal treatment with the junior persons who have allegedly been retained/engaged. To take this view, I am fortified with the judgment of our own **Hon'ble High Court in CWP No. 4515/2012 decided on 13-6-2012, titled as Suraj Mani Vs. HPSEB** wherein it has been held that the petitioners cannot claim equal treatment after about two decades with the juniors who have allegedly been retained. The petitioner who slept for a long period of 20 years is not entitled to claim any relief on the ground of equal treatment. Since, the application has been proved to be stale and belated as such the protection of sections 25-G and 25-H of the Act cannot be granted to the petitioner.

26. Thus, keeping in view the above cited rulings and the material fact that the petitioner had filed the present application after a lapse of about 20 years as such no relief can be granted to him. Hence, it cannot be said that the termination of the services of the petitioner is illegal and unjustified. Consequently, all these issues are answered against the petitioner.

Issue No.2 :

27. Since, the petitioner has failed to prove issue No.1, above, this issue becomes redundant.

Relief :

As a sequel to my findings on the aforesaid issues, the application filed by the petitioner under section 2-A of the Act fails and is hereby dismissed. Let a copy of this award/order be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 2nd Day of July, 2018.

Sd/-
 (SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Ref. No. 54 of 2016

Instituted on 17-6-2016

Decided on 2-7-2018

Smt. Kanta Devi d/o Shri N. S. Chauhan, resident of NavNiketan, Upper Chalaunthi, Sanjauli, Shimla-6, H.P. . Petitioner.

Vs.

Managing Director, Civil Supply Corporation, Block No. 16-17, SDA Commercial Complex, Kasumti, Shimla-9, H.P. . Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Vishal Kashyap, Advocate vice Shri Bhagwan Chand, Advocate

For respondent : Shri Rajesh Thakur. Advocate

AWARD

The following reference has been received from appropriate government by this court for adjudication:

“Whether demand raised by the Secretary, I & PH Workers Union (affiliated to CITU), 9, Bawa Building, The Mall Shimla, H.P. vide demand notice dated 01-8-2013 (copy enclosed) demanding regularization of the services of Smt. Kanta Devi w/o Shri Nain Sukh, Village Nav Niketan, Thakur Colony, Upper Chalaunthi, Sanjauli, Shimla-6 by the Managing Director, Civil Supplies Corporation, Block No. 16-17, SDA Commercial Complex, Kasumti, Shimla-9, at par with regularization of Smt. Meera Devi & Smt. Sanjana Devi, who are junior to Smt. Kanta Devi in compliance to award passed by Ld. Labour Court-cum-Industrial Tribunal Shimla in Reference No. 81/2006 and order dated 16-12-2008 passed by the Hon'ble High Court of Himachal Pradesh in CWP No.1204/2007, is legal and justified? If yes, what service benefits i.e. regularization, seniority and arrear of back wages Smt. Kanta Devi is entitled to from the above employer?”

2. In nutshell, the case of the petitioner is that on 10-7-1997, she was appointed first time as part time worker by the respondent department and remained as such upto 15-1-2001 and thereafter she was appointed as part time daily wage clerk on 16-1-2001 and since then she was working as part time daily wage clerk in the department and consequently her services have been regularized by the department in the month of October, 2016. It is further stated that the petitioner was having good knowledge regarding the typing work, hence, she was engaged alongwith Meera and Sanjana for the purpose of typing on 18-1-2000 and the respondent department regularized the services of Smt. Meera Devi and Sanjana Devi but the petitioner was deprived of regularization despite the fact that both Meera Devi and Sanjan Devi are juniors to the petitioner. It is also stated that prior to the appointment of the petitioner on daily wage typist, typing test was conducted by the respondent department which was successfully qualified by her and she continued to discharge the duties of daily rated typist *w.e.f.* 18-1-2000 till her services have been regularized. That Smt. Meera Devi and Sanjana Devi have filed OA before the Administrative Tribunal and the Tribunal directed the respondents to consider the application for the post of daily wage typist on which post she was already working and on the same terms and conditions and the period between reengagement and disengagement would be counter for seniority but not for backwages. That there was no complaint regarding the working of petitioner and she was honestly serving her duties and the respondent should issue office order regarding the regularization of the petitioner prior to Meera and Sanjana Devi. Against this back-drop it has been prayed that the services of the petitioner should be regularized prior to 28-8-2009, 10-2-2010 as regular typist as Meera Devi and Sanjana Devi are

junior to petitioner. It has also been prayed that the petitioner be compensated with back-wages and seniority.

3. By filing reply, the respondent contested the claim of the petitioner wherein preliminary objections have been taken *qua* maintainability and estoppel. On merits, it has been asserted that the petitioner is working as part time worker with the respondent since 10-7-1997 and the respondent never had taken her services as typist till date. It is admitted that the services of Meera Devi and Sanjana Devi were taken as typist in the corporation whereas the services of petitioner is of helper and not as typist. The respondent prayed for the dismissal of the claim petition.

4. Rejoinder not filed. On the pleadings of the parties, the following issues were framed.

1. Whether the petitioner is entitled for regularization of her services as alleged? .OPP.
2. If issue No.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? .OPP.
3. Whether the petition is not maintainable as alleged? .OPR.
4. Relief.

5. I have heard the learned counsel for the parties and also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under :—

Issue No. 1 : No.

Issue No. 2 : Becomes redundant

Issue No. 3 : No.

Relief: Reference answered in favour of the respondent and against the petitioner per operative part of award.

Reasons for findings

Issues No.1 :

7. The learned vice counsel for the petitioner contended that since the petitioner was working as a typist with the respondent, hence, she is entitled to be regularized as typist at par with the regularization of Smt. Meera Devi and Sanjana Devi who were her juniors have been regularized as typists but she was deprived from regularization.

8. On the other hand, the learned counsel for the respondent contended that the petitioner was never engaged as typist, hence, the question of her regularization as typist does not arise.

9. To prove her case, the petitioner examined two PWs. PW-1 Shri Kulwant Thakur, Senior Assistant appeared into the witness and tendered in evidence the copy of seniority list Ex. PW-1/A. He deposed that as per the seniority list, Kanta Devi (petitioner) is senior to Meera Devi

and Sanjana Devi. He further deposed that the services of Meera Devi and Kanta Devi have been regularized as per the office order dated 10-2-2010 Ex. PW-1/B.

10. Petitioner herself appeared into the witness box as PW-2 to depose that she has been posted in the respondent corporation at Bhatta Kuffar as clerk and she was initially engaged by the respondent in the year, 1997 as part time worker and remained as such till the year, 2001 and thereafter she was engaged on daily wage basis. She further deposed that Meera and Sanjana were engaged after me as part time workers and the respondent used to get the work of typing from her in the office. She tendered in evidence the copies of diploma in typing Ex. PW-2/A and Ex. PW 2/B. She also stated that she should have been regularized as typist as Meera and Sanjana have been regularized as typists upon the orders of the Court. In crossexamination, she admitted that she was appointed as daily wager clerk on 16-1-2001. She stated that her services have been regularized as a helper in October, 2016 and she was never appointed as typist by the corporation.

11. On the other hand, the respondent has examined two RWs. RW-1 Shri Chunni Lal Senior Assistant deposed that the petitioner was engaged as part time worker in the year, 1997 and on 13-11-2000 she was converted in to daily wager and she worked as daily wager till 16-5-2001. He further deposed that since her work was not satisfactory, she was again reverted as a part time worker on 16-5-2001 and she worked as part time helper till 25-9-2016. He also stated that on 26-9-2016 she was regularized as Public Distribution Helper and on 7-10-2016, she joined the aforesaid post and thereafter most of time she remained absent without salary on extra ordinary leave and now she stood retired from service on 31-1-2018. In crossexamination, he admitted that the petitioner was engaged as part time helper from 10-7-1997 and worked as such till 15-1-2001. He denied that she was engaged as part time clerk from 16-1-2001. He further denied that the petitioner was regularized as clerk in October, 2016. He admitted that Meera Devi and Sanjana Devi were engaged alongwith the petitioner as part time helpers. He denied that the petitioner was working as a typist from 18-1-2000. He further denied that the case of the petitioner is similar to the case of Meera Devi and Sanjana Devi. He admitted that the petitioner is not working in the head office and has never worked there.

12. RW-2 Shri Rajesh Sharma, clerk stated that the petitioner was working as a helper in their area office at Bhattachuffer till her retirement and she stood retired from service on 31-1-2018. In cross-examination, he denied that the petitioner was working as a typist. He further denied that the petitioner was working as a typist even before his joining at the area office.

13. I have closely scrutinized the entire record of the case and after the closure scrutiny thereof it has become clear that the petitioner was engaged as a part time worker in the year, 1997 and on 13-11-2000, she was converted into a daily wager and she worked as such till 16-5-2001. Though, RW-1 deposed that since her work was not satisfactory, hence, she was again reverted as a part time worker on 16-5-2001. However, no record has been produced by him in this respect. It has also become clear from the evidence on record that the petitioner was regularized as Public Distribution Helper on 26-9-2016 and now she stood retired from service on 31-1-2018. It is also not in dispute that an award was passed by this Court in reference No. 81/2006 wherein Smt. Meera Devi and Sanjana Devi were ordered to be taken back as daily paid typists and they were also held entitled for the backwages from the date of their reversion *i.e* 16th May, 2001 and the award was upheld by the Hon'ble High Court *vide* order dated 16-12-2008 passed in CWP No. 12.04 of 2007. It is also not in dispute that Meera Devi and Sanjana Devi have been regularized as stenotypists *vide* office order dated 10-2-2010 Ex. PW-1/B. The case of the petitioner is that since she was also working as a typist as such she should have also been regularized as steno-typist as Meera Devi & Sanjana Devi were juniors to her. On the other hand the case of the respondent that the services of Meera Devi and Sanjana Devi were taken as typists in the corporation whereas the service of petitioner was of helper and not as typist. Therefore, it was incumbent upon the petitioner to prove

by leading cogent and satisfactory evidence on record that she was working as a typist and her case was similar to that of Meera Devi and Sanjana Devi. However, except for the bald statement of the petitioner no other evidence has been led by her to this effect. Even, in her cross-examination, the petitioner admitted that she was never appointed as a typist. The respondent has categorically denied that the petitioner was working as a typist and the work of typist was being taken from her by the department. RW-1 specifically denied that the petitioner was working as a typist *w.e.f.* 18-1-2000. He also denied that the case of the petitioner is similar to the case of Meera Devi & Sanjana Devi. RW-2 specifically deposed that the petitioner was working as a helper in the area office at Bhatakuffer till her retirement on 31-1-2018. He specifically denied the suggestion that the petitioner was working as a typist. Therefore, in view of the entire evidence on record, it cannot be said that the demand raised by the Secretary, I & PH Workers Union (affiliated to CITU), 9, Bawa Building, The Mall Shimla, H.P. *vide* demand notice dated 01-8-2013 demanding regularization of the services of petitioner by the respondent at par with regularization of Smt. Meera Devi & Smt. Sanjana Devi, is legal and justified. Accordingly issue No.1 is decided in favour of the respondent and against the petitioner.

Issue No. 2 :

14. Since, the petitioner has failed to prove issue No.1, above, this issue becomes redundant.

Issue No. 3 :

15. In support of this issue, no evidence has been led by the respondent. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Relief :

As a sequel to my findings on the aforesaid issues, the claim of the petitioner fails and is hereby dismissed. Consequently, the reference stands answered against the petitioner and in favour of the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 2nd Day of July, 2018.

Sd/-
 (SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

31-7-2018

Present: None for the petitioner.
 Shri Naresh Sharma, Advocate for respondent.

It is 10:35 AM. Case called twice but none appeared on behalf of the petitioner. Be awaited.

Sd/-
Presiding Judge,
Labour Court, Shimla.

Case called again

Present: None for the petitioner.
Shri Naresh Sharma, Advocate for respondent.

It is 12.45 PM. Case called again but neither the petitioner nor his counsel appeared before this Court. Be called after lunch.

Sd/-
*Presiding Judge,
Labour Court, Shimla.*

Case called after lunch

Present: None for the petitioner.
Shri Naresh Sharma, Advocate for respondent.

It is 3.35 PM. Case called repeatedly in pre and post lunch sessions but neither the petitioner nor his Advocate appeared before this Court despite the fact that on the previous dates Shri Nirnajan Verma, Advocate had appeared on behalf of petitioner. For today, the case has been listed for filing of claim petition but despite having availed several opportunities in order to file the claim, none appeared on behalf of the petitioner which clearly shows that at present the petitioner is not interested to pursue his case arising out of the reference sent by the appropriate government to this Court for adjudication. Therefore, this Court is left with no other alternative but to decide the reference on the basis of the material whatsoever is available on the file. The following reference has been sent by the appropriate government for adjudication to this Court:

“Whether dismissal/termination of services of Shri Randeep Singh s/o Shri Amar Singh r/o Village Lobhi, P.O Rajpur, Tehsil Paonta Sahib, District Sirmaur, H.P. by (i) The Manager, M/s Mujjamil, Engineering Works Village Mohiuddinpur, P.O Kailashpur, District Saharanpur (UP C/o M/s Patel Engineering Ltd. Shogthong Karchham Hydro Electric Project, Reckong Peo, Tehsil Kalpa, Distt. Kinnaur, H.P. (sub contractor) and (ii) the General Manager, M/s Patel Engineering Ltd. Shogthong Karchham Hydro Electric Project, Reckong Peo, Tehsil Kalpa, Distt. Kinnaur, H.P. (sub contractor) and (ii) the General Manager, M/s Patel Engineering Ltd. Shogthong Karchham Hydro Electric Project, Reckong Peo, Tehsil Kalpa, Distt. Kinnaur, H.P. (contractor) w.e.f. 14-3-2016, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

From the aforesaid reference, it is clear that the petitioner has alleged his termination *w.e.f.* 14-3-2016 to be illegal and unjustified but despite having availed various opportunities, he has failed to appear before this Court and to file statement of claim in support of his contention arising out of reference. There is no material on record/file which could go to show that the services of the petitioner have been terminated illegally *w.e.f.* 14-3-2016 without complying with the provisions of Industrial Disputes Act, 1947. Hence, this Court is left with no other alternative but to answer the reference against the petitioner and as such the reference is answered against the petitioner and the

award is passed accordingly. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
31-7-2018.

Sd/-
(SUSHIL KUKREJA),
*Presiding Judge,
Labour Court, Shimla.*

31-7-2018

Present: None for the petitioner.
Shri Naresh Sharma, Advocate for respondent.

It is 10.40 AM. Case called twice but none appeared on behalf of the petitioner. Be awaited.

Sd/-
*Presiding Judge,
Labour Court, Shimla.*

Case called again

Present: None for the petitioner.
Shri Naresh Sharma, Advocate for respondent.

It is 12.35 PM. Case called again but neither the petitioner nor his counsel appeared before this Court. Be called after lunch.

Sd/-
*Presiding Judge,
Labour Court, Shimla.*

Case called after lunch

Present: None for the petitioner.
Shri Naresh Sharma, Advocate for respondent.

It is 3.40 PM. Case called repeatedly in pre and post lunch sessions but neither the petitioner nor his Advocate appeared before this Court despite the fact that on the previous dates Shri Nirnajan Verma, Advocate had appeared on behalf of petitioner. For today, the case has been listed for filing of claim petition but despite having availed several opportunities in order to file the claim, none appeared on behalf of the petitioner which clearly shows that at present the petitioner is not interested to pursue his case arising out of the reference sent by the appropriate government to this Court for adjudication. Therefore, this Court is left with no other alternative but to decide the

reference on the basis of the material whatsoever is available on the file. The following reference has been sent by the appropriate government for adjudication to this Court:

“Whether dismissal/termination of services of Shri Brijesh Singh s/o Shri Ram Singh r/o Village and P.O. Malla Bapru Tehsil & District Champawat (UK) by The General Manager, M/s Patel Engineering Ltd. Shogthong Karchham Hydro Electric Project, Reckong Peo, Tehsil Kalpa, Distt. Kinnaur, H.P. w.e.f. 30-3-2016, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

From the aforesaid reference, it is clear that the petitioner has alleged his termination *w.e.f.* 30-3-2016 to be illegal and unjustified but despite having availed various opportunities, he has failed to appear before this Court and to file statement of claim in support of his contention arising out of reference. There is no material on record/file which could go to show that the services of the petitioner have been terminated illegally *w.e.f.* 30-3-2016 without complying with the provisions of Industrial Disputes Act, 1947. Hence, this Court is left with no other alternative but to answer the reference against the petitioner and as such the reference is answered against the petitioner and the award is passed accordingly. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
31-7-2018.

Sd/-
(SUSHIL KUKREJA),
*Presiding Judge,
Labour Court, Shimla.*

31-7-2018

Present: None for the petitioner.
Shri Naresh Sharma, Advocate for respondent.

It is 10.30 A.M. Case called twice but none appeared on behalf of the petitioner. Be awaited.

Sd/-
*Presiding Judge,
Labour Court, Shimla.*

Case called again

Present: None for the petitioner.
Shri Naresh Sharma, Advocate for respondent.

It is 12.50 PM. Case called again but neither the petitioner nor his counsel appeared before this Court. Be called after lunch.

Sd/-
*Presiding Judge,
Labour Court, Shimla.*

Case called after lunch

Present: None for the petitioner.
Shri Naresh Sharma, Advocate for respondent.

It is 3.30 PM. Case called repeatedly in pre and post lunch sessions but neither the petitioner nor his Advocate appeared before this Court despite the fact that on the previous dates Shri Nirnajan Verma, Advocate had appeared on behalf of petitioner. For today, the case has been listed for filing of claim petition but despite having availed several opportunities in order to file the claim, none appeared on behalf of the petitioner which clearly shows that at present the petitioner is not interested to pursue his case arising out of the reference sent by the appropriate government to this Court for adjudication. Therefore, this Court is left with no other alternative but to decide the reference on the basis of the material whatsoever is available on the file. The following reference has been sent by the appropriate government for adjudication to this Court:

“Whether dismissal/termination of services of Shri Ram Singh s/o Shri Jai Singh r/o Village Jagerigawan, P.O Swapana, Tehsil Jant District Beaiterdi (Nepa) by (i) The Manager, M/s Mujjamil, Engineering Works Village Mohiuddinpur, P.O. Kailashpur, District Sahranpur (UP c/o M/s Patel Engineering Ltd. Shogthong Karchham Hydro Electric Project, Reckong Peo, Tehsil Kalpa, Distt. Kinnaur, H.P. (sub contractor) and (ii) the General Manager, M/s Patel Engineering Ltd. Shogthong Karchham Hydro Electric Project, Reckong Peo, Tehsil Kalpa, Distt. Kinnaur, H.P. (contractor) w.e.f. 14-3-2016, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

From the aforesaid reference, it is clear that the petitioner has alleged his termination *w.e.f.* 14-3-2016 to be illegal and unjustified but despite having availed various opportunities, he has failed to appear before this Court and to file statement of claim in support of his contention arising out of reference. There is no material on record/file which could go to show that the services of the petitioner *w.e.f.* 14-3-2016 have been terminated illegally without complying with the provisions of Industrial Disputes Act, 1947. Hence, this Court is left with no other alternative but to answer the reference against the petitioner and as such the reference is answered against the petitioner and the award is passed accordingly. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
31-7-2018.

Sd/-
(SUSHIL KUKREJA),
Presiding Judge,
Labour Court, Shimla.

31-7-2018

Present: None for the petitioner.
Shri Naresh Sharma, Advocate for respondent.

It is 10.45 AM. Case called twice but none appeared on behalf of the petitioner. Be awaited.

Sd/-
(*Presiding Judge,*
Labour Court, Shimla.)

Case called again

Present: None for the petitioner.
Shri Naresh Sharma, Advocate for respondent.

It is 12.30 PM. Case called again but neither the petitioner nor his counsel appeared before this Court. Be called after lunch.

Sd/-
*Presiding Judge,
Labour Court, Shimla.*

Case called after lunch

Present: None for the petitioner.
Shri Naresh Sharma, Advocate for respondent.

It is 3.45 PM. Case called repeatedly in pre and post lunch sessions but neither the petitioner nor his Advocate appeared before this Court despite the fact that on the previous dates Shri Nirmajan Verma, Advocate had appeared on behalf of petitioner. For today, the case has been listed for filing of claim petition but despite having availed several opportunities in order to file the claim, none appeared on behalf of the petitioner which clearly shows that at present the petitioner is not interested to pursue his case arising out of the reference sent by the appropriate government to this Court for adjudication. Therefore, this Court is left with no other alternative but to decide the reference on the basis of the material whatsoever is available on the file. The following reference has been sent by the appropriate government for adjudication to this Court:

“Whether dismissal/termination of services of Shri Mangal Dass s/o late Shri Ram Singh r/o Village Maghara, P.O Dofta, Tehsil Rampur, District Shimla, HP by The General Manager, M/s Patel Engineering Ltd. Shogthong Karchham Hydro Electric Project, Reckong Peo, Tehsil Kalpa, Distt. Kinnaur, H.P. w.e.f. 21-9-2016, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

From the aforesaid reference, it is clear that the petitioner has alleged his termination *w.e.f.* 21-9-2016 to be illegal and unjustified but despite having availed various opportunities, he has failed to appear before this Court and to file statement of claim in support of his contention arising out of reference. There is no material on record/file which could go to show that the services of the petitioner have been terminated illegally *w.e.f.* 21-9-2016 without complying with the provisions of Industrial Disputes Act, 1947. Hence, this Court is left with no other alternative but to answer the reference against the petitioner and as such the reference is answered against the petitioner and the award is passed accordingly. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
31-7-2018.

Sd/-
*(SUSHIL KUKREJA),
Presiding Judge,
Labour Court, Shimla.*

30-7-2018

Present: None for the petitioner.
Shri Naresh Sharma, Advocate for respondent.

It is 10.40 AM. Case called twice but none appeared on behalf of the petitioner. Be awaited.

Sd/-
*Presiding Judge,
Labour Court, Shimla.*

Case called again

Present: None for the petitioner.
Shri Naresh Sharma, Advocate for respondent.

It is 12.50 PM. Case called again but neither the petitioner nor his counsel appeared before this Court. Be called after lunch.

Sd/-
*Presiding Judge,
Labour Court, Shimla.*

Case called after lunch

Present: None for the petitioner.
Shri Naresh Sharma, Advocate for respondent.

It is 3.35 PM. Case called repeatedly in pre and post lunch sessions but neither the petitioner nor his Advocate appeared before this Court despite the fact that on the previous date Shri Nirnajan Verma, Advocate had appeared on behalf of petitioner. For today, the case has been listed for filing of claim petition but despite having availed several opportunities in order to file the claim, none appeared on behalf of the petitioner which clearly shows that at present the petitioner is not interested to pursue his case arising out of the reference sent by the appropriate government to this Court for adjudication. Therefore, this Court is left with no other alternative but to decide the reference on the basis of the material whatsoever is available on the file. The following reference has been sent by the appropriate government for adjudication to this Court:

“Whether dismissal/termination of services of Shri Shekhar Thapa s/o Shri Nar Bahadur, Village-Kolibehar, P.O. Mohal, Tehsil Kullu, Distt. Kullu, H.P.-175126 by the General Manager, M/s Patel Engineering Ltd. Shongthong-Karchham Hydro Electric Project, Reckong Peo, Tehsil Kalpa, Distt. Kinnaur, H.P. w.e.f. 21-9-2016, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

From the aforesaid reference, it is clear that the petitioner has alleged his termination *w.e.f.* 21-9-2016 to be illegal and unjustified but despite having availed various opportunities, he has

failed to appear before this Court and to file statement of claim in support of his contention arising out of reference. There is no material on record/file which could go to show that the services of the petitioner *w.e.f.* 21-9-2016 have been terminated illegally without complying with the provisions of Industrial Disputes Act, 1947. Hence, this Court is left with no other alternative but to answer the reference against the petitioner and as such the reference is answered against the petitioner and the award is passed accordingly. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
30-7-2018.

Sd/-
(SUSHIL KUKREJA),
Presiding Judge,
Labour Court, Shimla.

30-07-2018

Present: None for the petitioner.
Shri Naresh Sharma, Advocate for respondent.

It is 10.50 AM. Case called twice but none appeared on behalf of the petitioner. Be awaited.

Sd/-
Presiding Judge,
Labour Court, Shimla.

Case called again

Present: None for the petitioner.
Shri Naresh Sharma, Advocate for respondent.

It is 12.50 PM. Case called again but neither the petitioner nor his counsel appeared before this Court. Be called after lunch.

Sd/-
Presiding Judge,
Labour Court, Shimla.

Case called after lunch

Present: None for the petitioner.
Shri Naresh Sharma, Advocate for respondent.

It is 3.30 PM. Case called repeatedly in pre and post lunch sessions but neither the petitioner nor his Advocate appeared before this Court despite the fact that on the previous date Shri Nirnajan Verma, Advocate had appeared on behalf of petitioner. For today, the case has been listed for filing

of claim petition but despite having availed several opportunities in order to file the claim, none appeared on behalf of the petitioner which clearly shows that at present the petitioner is not interested to pursue his case arising out of the reference sent by the appropriate government to this Court for adjudication. Therefore, this Court is left with no other alternative but to decide the reference on the basis of the material whatsoever is available on the file. The following reference has been sent by the appropriate government for adjudication to this Court:

“Whether dismissal/termination of services of Shri Ajay Kumar Sharma s/o Shri Kartar Dutt Sharma, r/o Village Tutu, P.O. Delath, Tehsil Rampur, Distt. Shimla, H.P. by the General Manager, M/s Patel Engineering Ltd. Shogthong Karchham Hydro Electric Project, Reckong Peo, Tehsil Kalpa, Distt. Kinnaur, H.P. w.e.f. 21-9-2016, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

From the aforesaid reference, it is clear that the petitioner has alleged his termination *w.e.f.* 21-9-2016 to be illegal and unjustified but despite having availed various opportunities, he has failed to appear before this Court and to file statement of claim in support of his contention arising out of reference. There is no material on record/file which could go to show that the services of the petitioner have been terminated illegally *w.e.f.* 21-9-2016 without complying with the provisions of Industrial Disputes Act, 1947. Hence, this Court is left with no other alternative but to answer the reference against the petitioner and as such the reference is answered against the petitioner and the award is passed accordingly. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
30-7-2018.

Sd/-
(SUSHIL KUKREJA)
*Presiding Judge,
Labour Court, Shimla.*

30-7-2018

Present: None for the petitioner.
Shri Naresh Sharma, Advocate for respondent.

It is 10.45 AM. Case called twice but none appeared on behalf of the petitioner. Be awaited.

Sd/-
*Presiding Judge,
Labour Court, Shimla.*

Case called again

Present: None for the petitioner.
Shri Naresh Sharma, Advocate for respondent.

It is 12.35 PM. Case called again but neither the petitioner nor his counsel appeared before this Court. Be called after lunch.

Sd/-
*Presiding Judge,
Labour Court, Shimla.*

Case called after lunch

Present: None for the petitioner.
Shri Naresh Sharma, Advocate for respondent.

It is 3.50 PM. Case called repeatedly in pre and post lunch sessions but neither the petitioner nor his Advocate appeared before this Court despite the fact that on the previous date Shri Nirnajan Verma, Advocate had appeared on behalf of petitioner. For today, the case has been listed for filing of claim petition but despite having availed several opportunities in order to file the claim, none appeared on behalf of the petitioner which clearly shows that at present the petitioner is not interested to pursue his case arising out of the reference sent by the appropriate government to this Court for adjudication. Therefore, this Court is left with no other alternative but to decide the reference on the basis of the material whatsoever is available on the file. The following reference has been sent by the appropriate government for adjudication to this Court:

“Whether dismissal/termination of services of Shri Yash Pal s/o Shri Balak Ram, r/o Village & P.O. Poshana, Tehsil Nirmand, Distt. Kullu, H.P. by the General Manager, M/s Patel Engineering Ltd. Shongthong-Karchham Hydro Electric Project, Reckong Peo, Tehsil Kalpa, Distt. Kinnaur, H.P. w.e.f. 30-3-2016, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

From the aforesaid reference, it is clear that the petitioner has alleged his termination *w.e.f.* 30-3-2016 to be illegal and unjustified but despite having availed various opportunities, he has failed to appear before this Court and to file statement of claim in support of his contention arising out of reference. There is no material on record/file which could go to show that the services of the petitioner have been terminated illegally *w.e.f.* 30-3-2016 without complying with the provisions of Industrial Disputes Act, 1947.

Hence, this Court is left with no other alternative but to answer the reference against the petitioner and as such the reference is answered against the petitioner and the award is passed accordingly. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
30-7-2018.

Sd/-
(SUSHIL KUKREJA)
*Presiding Judge,
Labour Court, Shimla.*

30-7-2018

Present: None for the petitioner.

Shri Naresh Sharma, Advocate for respondent.

It is 10.30 AM. Case called twice but none appeared on behalf of the petitioner. Be awaited.

Sd/-
*Presiding Judge,
Labour Court, Shimla.*

Case called again

Present: None for the petitioner.

Shri Naresh Sharma, Advocate for respondent.

It is 12:40 P.M. Case called again but neither the petitioner nor his counsel appeared before this Court. Be called after lunch.

Sd/-
*Presiding Judge,
Labour Court, Shimla.*

Case called after lunch

Present: None for the petitioner.

Shri Naresh Sharma, Advocate for respondent.

It is 3.45 PM. Case called repeatedly in pre and post lunch sessions but neither the petitioner nor his Advocate appeared before this Court despite the fact that on the previous date Shri Nirnajan Verma, Advocate had appeared on behalf of petitioner. For today, the case has been listed for filing of claim petition but despite having availed several opportunities in order to file the claim, none appeared on behalf of the petitioner which clearly shows that at present the petitioner is not interested to pursue his case arising out of the reference sent by the appropriate government to this Court for adjudication. Therefore, this Court is left with no other alternative but to decide the reference on the basis of the material whatsoever is available on the file. The following reference has been sent by the appropriate government for adjudication to this Court:

“Whether dismissal/termination of services of Shri Ashu Chauhan s/o Shri Surat Singh, V.P.O-Khodri Majri, Tehsil Paonta Sahib, Distt. Sirmaur, H.P. by the General Manager, M/s Patel Engineering Ltd. Songthong-Karchham Hydro Electric Project, Reckong Peo, Tehsil Kalpa, Distt. Kinnaur, H.P. w.e.f. 30-3-2016, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

From the aforesaid reference, it is clear that the petitioner has alleged his termination *w.e.f.* 30-3-2016 to be illegal and unjustified but despite having availed various opportunities, he has

failed to appear before this Court and to file statement of claim in support of his contention arising out of reference. There is no material on record/file which could go to show that the services of the petitioner have been terminated illegally *w.e.f.* 30-3-2016 without complying with the provisions of Industrial Disputes Act, 1947. Hence, this Court is left with no other alternative but to answer the reference against the petitioner and as such the reference is answered against the petitioner and the award is passed accordingly. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
30-7-2018.

Sd/-
(SUSHIL KUKREJA),
Presiding Judge,
Labour Court, Shimla.

30-7-2018

Present: None for the petitioner.
Shri Naresh Sharma, Advocate for respondent.

It is 10.35 AM. Case called twice but none appeared on behalf of the petitioner. Be awaited.

Sd/-
Presiding Judge,
Labour Court, Shimla.

Case called again

Present: None for the petitioner.
Shri Naresh Sharma, Advocate for respondent.

It is 12.45 PM. Case called again but neither the petitioner nor his counsel appeared before this Court. Be called after lunch.

Sd/-
Presiding Judge,
Labour Court, Shimla.

Case called after lunch

Present: None for the petitioner.
Shri Naresh Sharma, Advocate for respondent.

It is 3.40 PM. Case called repeatedly in pre and post lunch sessions but neither the petitioner nor his Advocate appeared before this Court despite the fact that on the previous date Shri Nirnajan Verma, Advocate had appeared on behalf of petitioner. For today, the case has been listed for filing

of claim petition but despite having availed several opportunities in order to file the claim, none appeared on behalf of the petitioner which clearly shows that at present the petitioner is not interested to pursue his case arising out of the reference sent by the appropriate government to this Court for adjudication. Therefore, this Court is left with no other alternative but to decide the reference on the basis of the material whatsoever is available on the file. The following reference has been sent by the appropriate government for adjudication to this Court:

“Whether termination of services of Shri Parmanand s/o Shri Tej Ram, r/o Village Thara Kalwal, P.O. Kalwal, Tehsil Billawar, Distt. Kathua (J&K) by the General Manager, M/s Patel Engineering Ltd. Shongthong-Karchham Hydro Electric Project, Reckong Peo, Tehsil Kalpa, Distt. Kinnaur, H.P. w.e.f. 21-9-2016, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

From the aforesaid reference, it is clear that the petitioner has alleged his termination *w.e.f.* 21-9-2016 to be illegal and unjustified but despite having availed various opportunities, he has failed to appear before this Court and to file statement of claim in support of his contention arising out of reference. There is no material on record/file which could go to show that the services of the petitioner have been terminated illegally *w.e.f.* 21-9-2016 without complying with the provisions of Industrial Disputes Act, 1947. Hence, this Court is left with no other alternative but to answer the reference against the petitioner and as such the reference is answered against the petitioner and the award is passed accordingly. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
30-7-2018.

Sd/-
(SUSHIL KUKREJA)
*Presiding Judge,
Labour Court, Shimla.*

2-7-2018

Present: Shri J.C Bhardwaj, AR for the petitioner.
Shri Deveshwer Sharma, (HR Specialist) with
Shri Rahul Mahajan, Advocate for respondent.

Vide my separate office order dated 30.6.2018, this case is taken up today.

At this stage, it has been stated by Shri J. C. Bhardwaj, AR for the petitioner that the petitioner has settled the matter with the respondent and in terms of settlement, he has received a demand draft in the sum of Rs. 80,000/- from the respondent in the Court today in full & final settlement of the claim arising out of the present reference No. 79/2014. He further stated that now the petitioner has no dispute with the respondent and the reference be decided accordingly. To this effect his statement recorded separately.

Vide separate statement Shri Deveshwer Sharma (HR) Specialist for respondent has stated that the petitioner has settled the matter with the respondent and in terms of the settlement he has handed over a demand draft in the sum of Rs. 80,000/- to the AR for the petitioner in the Court today in full & final settlement of the claim arising out of the reference No. 79/2014.

Therefore, in view of the aforesaid statements, since the petitioner has settled the dispute with the respondent company in full & final settlement of the claim arising out of reference No. 79/2014, the present reference is disposed off as settled in terms of aforesaid statements of the parties, which shall form a part of the award. Let a copy of this award/order be sent to the appropriate government for publication in the official gazette. File after completion, be consigned to records.

Announced:
2-7-2018.

Sd/-
(SUSHIL KUKREJA),
Presiding Judge
Labour Court, Shimla.

06.07.2018

Present: None for the petitioner.
Sh. Navesh Kumar, Ld. Csl. for respondent.

Case called repeatedly in pre and post lunch sessions, but neither the petitioner nor any authorized representative appeared on behalf of the petitioner today before this Court. Petitioner was present on the previous date of hearing and she was aware about the today's proceedings, which clearly shows that at present the petitioner is not interested to pursue her case arising out of the reference sent by the appropriate government to this Court for adjudication. Therefore, this Court is left with no other alternative but to decide the reference on the basis of the material whatsoever is available on the file. The following reference has been sent by the appropriate government for adjudication to this Court:

“Whether action of the management of M/s L.R. Group of Institutes, Village JabliKyar, P.O. Oachghat, Tehsil & Distt. Solan not to allow Ms. Rukmani Sharma r/o Sai Apartment, Block-E, 3rd Floor, House No. 317 Near Flora Hotel, Bye-Pass, Saproon, Thesil & Distt. Solan, H.P. to resume her duty during December, 2015, is legal and justified? If not, what relief including reinstatement, amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above management?”

From the aforesaid reference, it is clear that the petitioner has alleged her termination during December, 2015 to be illegal and unjustified but, she has failed to appear before this Court today and to file statement of claim in support of her contention arising out of reference. There is no other alternative but to answer the reference against the petitioner and as such the reference is answered against the petitioner and the award is passed accordingly. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
6-7-2018.

Sd/-
(SUSHIL KUKREJA),
Presiding Judge,
Labour Court, Shimla.

29-5-2018

Present: Shri Niranjan Verma, Advocate for petitioner.
Shri Navesh Kumar, Advocate for respondent.

Today, also claim not filed. At this stage it has been stated by Shri Niranjan Verma, Advocate for the petitioner that he does not want to proceed further with the present reference and wants to withdraw the same. To this effect, his statement recorded separately. Therefore, in view of the aforesaid statement of the learned counsel for the petitioner, the present reference is answered against the petitioner and in favour of respondent. The statement of the learned counsel for the petitioner which shall form part of this order/award. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
29-5-2018.

Sd/-
(SUSHIL KUKREJA),
*Presiding Judge,
Labour Court, Shimla.*

21-7-2018

Present: Sh. Niranjan Verma, Advocate for petitioner.
Sh. Navesh Kumar, Advocate for the respondent.

At this stage it has been stated by the learned counsel for the petitioner that the petitioner has settled the matter with the respondent out of court and has received a sum of ₹ 14,296/- as full and final settlement of his claim and now there is no dispute of the petitioner with the respondent with respect to the claim petition arising out of reference No. 132 of 2017 and as such he does not want to proceed further with the present reference and the same be decided as settled. To this effect, his statement recorded separately.

Vide separate statement recorded today it has been stated by Shri Navesh Kumar, Advocate for respondent that the respondent had settled the matter with the petitioner out of Court and had paid a sum of ₹ 14,296/- as full and final settlement to the petitioner as such the present reference be decided as settled.

Therefore, in view of the aforesaid statements of the learned counsel for the parties, I am satisfied that a lawful compromise has been effected between the parties and the dispute between them stands settled in terms of the statements of learned counsel for the parties, which shall form a part of this award/order. Therefore, the reference is answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to record.

Announced:
21-7-2018

Sd/-
(SUSHIL KUKREJA),
*Presiding Judge,
Labour Court, Shimla.*

BEFORE NATIONAL LOK ADALAT HELD ON 14-7-2018 AT SHIMLA

14-7-2018:

Present: Petitioner in person.
Shri Surender Kumar, Manager HR for respondent.

With the efforts of National Lok Adalat, the dispute between the parties has been settled. It has been stated by the petitioner that he is ready and willing to settle the dispute with the respondent company arising out of the present reference in full and final settlement of ₹50,000/- (₹ Fifty Thousand only) and he has received a cheque No. 510431 dated 30-6-2018 drawn on Axis Bank amounting to ₹ 42,647/- and remaining amount of ₹ 7,353/- has been paid to him in cash in the Court today towards the full and final settlement of his claim arising out of reference No. 58/2017 and now there is no dispute with the company and the reference be decided accordingly. To this effect his statement recorded separately.

Vide separate statement it has been stated by Shri Surender Kumar, Manager, HR of the respondent company that the company is ready to pay a sum of ₹ 50,000/- (₹ Fifty Thousand only) to the petitioner as his full & final settlement of the claim arising out of reference No. 58/2017 and a cheque No. 510431 dated 30-6-2018 drawn at Axis Bank amounting to ₹ 42,647/- has been handed over to the petitioner and remaining amount of ₹ 7,353/- has been paid to him in cash today in the Court.

Therefore, in view of the aforesaid statements of the parties, the dispute between the parties stands settled in terms of the statements of the parties which shall form a part of this order. Therefore, the reference sent by the appropriate government for adjudication is answered accordingly. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced:

Sd/- (T. R. AZAD) <i>Member</i> <i>National Lok Adalat.</i>	Sd/- (DR. M. L. KAUSHAL) <i>Member</i>	Sd/- (SUSHIL KUKREJA) <i>Chairman</i>
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BEFORE NATIONAL LOK ADALAT HELD ON 14-7-2018 AT SHIMLA

14-7-2018:

Present: Shri Niranjan Verma, Advocate for petitioner.
Shri Surender Kumar, Manager HR for respondent.

With the efforts of National Lok Adalat, the dispute between the parties has been settled. It has been stated by Shri Niranjan Verma, learned counsel for the petitioner that he has received a cheque No. 554377 dated 9-7-2018 drawn on State Bank of India amounting to ₹ 20,000/- (₹ Twenty Thousand only) on behalf of the petitioner from the respondent company towards the full and final settlement of claim and now there is no dispute of the petitioner with the respondent company arising out of the reference No. 12/2017 and the reference be decided accordingly. To this effect his statement recorded separately.

Vide separate statement it has been stated by Shri Surender Kumar, Manager, HR of the respondent company that the company is ready to pay a sum of ₹ 20,000/- (₹ Twenty Thousand only) to the petitioner as his full & final settlement of the claim arising out of reference No. 12/2017 and handed over a cheque No. 554377 dated 9-7-2018 drawn on State Bank of India amounting to ₹ 20,000/- (₹ Twenty Thousand only) to Shri Nirnajan Verma, Advocate for the petitioner towards the full and final settlement of claim of the petitioner.

Therefore, in view of the aforesaid statements of the parties, the dispute between the parties stands settled in terms of the statements of the parties which shall form a part of this order. Therefore, the reference sent by the appropriate government for adjudication is answered accordingly. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced:

Sd/-
 (T. R. AZAD)
Member
National Lok Adalat.

Sd/-
 (DR. M. L. KAUSHAL)
Member

Sd/-
 (SUSHIL KUKREJA)
Chairman